

United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles.

(IN THREE VOLUMES.)

RICHMOND DREDGING COMPANY, a Corporation,
Appellant,
vs.

STANDARD AMERICAN DREDGING COMPANY,
a Corporation, CALIFORNIA RECLAMATION
COMPANY, a Corporation, and ATLAS GAS
ENGINE COMPANY, a Corporation,
Appellees.

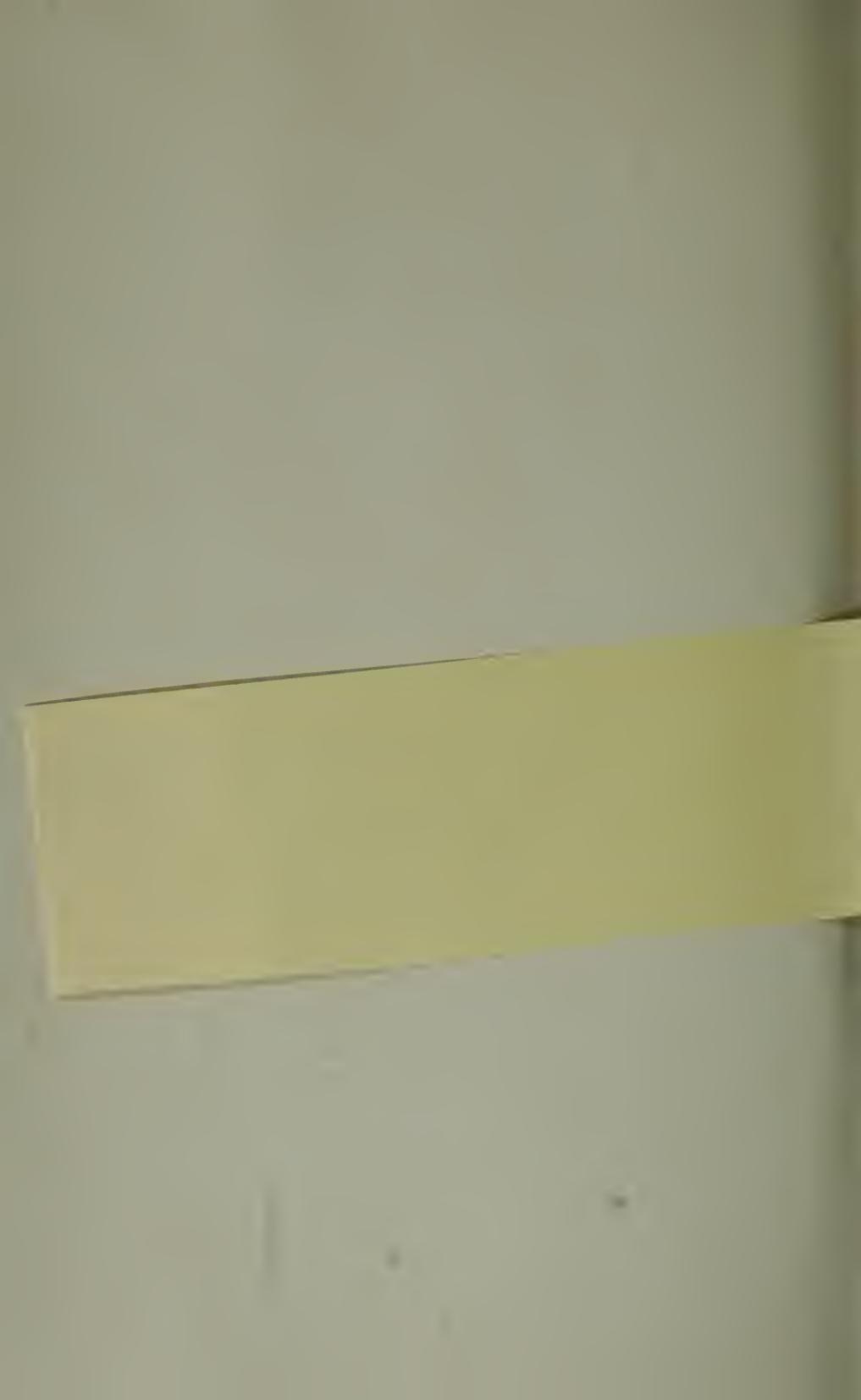
VOLUME I.
(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

FILED

FEB 25 1913

Records of U.S. Circuit
Court of Appeals
783



United States
Circuit Court of Appeals
For the Ninth Circuit.

Apostles.

(IN THREE VOLUMES.)

RICHMOND DREDGING COMPANY, a Corporation,
Appellant,
vs.

STANDARD AMERICAN DREDGING COMPANY,
a Corporation, CALIFORNIA RECLAMATION
COMPANY, a Corporation, and ATLAS GAS
ENGINE COMPANY, a Corporation,
Appellees.

VOLUME I.
(Pages 1 to 320, Inclusive.)

Upon Appeal from the United States District Court for the
Northern District of California, First Division.

INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Answer—Atlas Gas Engine Company.....	91
Answer—California Reclamation Company....	94
Answer, Supplemental	68
Answer, Supplemental—Standard American Dredging Company	97
Answer to Second Amended Libel	71
Appellant's Designation Under Rule 23.....	1
Assignment of Errors.....	1021
Bond for Release of Dredger.....	18
Certificate of Clerk, District Court, as to Ex- hibits	1031
Certificate of Clerk U. S. District Court to Apostles, etc.....	1029
Claim of Atlas Gas Engine Company.....	22
Claim of California Reclamation Company....	23
Claim of Standard American Dredging Com- pany.....	20
Commissioner's Certificate to Deposition of Raymond A. Perry.....	999
Cost-bills	1010
Decree	1008

DEPOSITIONS ON BEHALF OF CLAIM-
ANT:

PERRY, RAYMOND A.....	741
Cross-examination	810
Redirect Examination	975
Recross-examination	988

Exceptions to Second Amended Libel.....	59
---	----

EXHIBITS:

Claimant's Exhibit No. 4 (Contract Dated April, 1910, Between Southern Pacific Company and Standard American Dredging Company)	753
---	-----

Claimant's Exhibit No. 5 (Lease Dated May 20, 1910, Between the Atlas Gas Engine Company and R. A. Perry).....	769
--	-----

Claimant's Exhibit No. 6 (Letter Dated San Francisco, Cal., June 29, 1910, from the Atlas Gas Engine Company to The Standard American Dredging Com- pany)	772
---	-----

Claimant's Exhibit No. 7 (Package of Bills With Vouchers Attached for Work Done upon the Dredger "Richmond No. 1")	779
---	-----

Claimant's Exhibit No. 8 (Package of Bills for Repairs Made on the "Richmond No. 1")	790
--	-----

Claimant's Exhibit No. 8½ (Letter Dated San Francisco, August 12, 1910, from the Standard American Dredging Com-	
--	--

Index.

Page

EXHIBITS—Continued:

pany to the Richmond Dredging Company)	793
Claimant's Exhibit No. 9 (Letter Dated San Francisco, August 16, 1910, from H. C. Cutting to Standard American Dredging Company)	794
Claimant's Exhibit No. 10 (Letter Dated San Francisco, August 16, 1910, from Richmond Dredging Company to Standard American Dredging Company)....	796
Claimant's Exhibt No. 11 (Notice to Standard American Dredging Company Demanding Return of Dredger "Richmond No. 1," Signed by Richmond Dredging Company)	797
Claimant's Exhibit No. 12 (Letter Dated San Francisco, July 14, 1910, from Richmond Dredging Company to Standard American Dredging Company).....	799
Claimant's Exhibit No. 13 (Letter Dated San Francisco, January 5, 1911, from Standard American Dredging Company to Richmond Dredging Company)	800
Claimant's Exhibit No. 14 (Letter Dated San Francisco, January 6, 1911, from Richmond Dredging Company to Standard American Dredging Company)	801
Claimant's Exhibit No. 15 (Letter Dated San Francisco, Cal., February 3, 1911,	

EXHIBITS—Continued:

from Standard American Dredging Company to Richmond Dredging Company)	804
Claimant's Exhibit No. 16 (Letter Dated San Francisco, Cal., February 16, 1911, from Standard American Dredging Company to Richmond Dredging Company)	805
Claimant's Exhibit No. 17 (Letter Dated San Francisco, Cal., June 18, 1910, from Monarch Oil Refining Company to Standard American Dredging Company)	978
Claimant's Exhibit No. 18 (Letter Dated San Francisco, Cal., August 12, 1910, from Monarch Oil Refining Company to Standard American Dredging Company)	979
Claimant's Exhibit No. 19 (Letter Dated San Francisco, Cal., September 3, 1910, from Monarch Oil Refining Company to Standard American Dredging Company)	982
Claimant's Exhibit No. 20 (Letter Dated September 6, 1910, from Standard American Dredging Company to the Monarch Oil Refining Company)	983
Connor's Exhibit 1 in Sur-rebuttal (Contract Dated February, 1910, Between the Standard American Dredging Com-	

Index.

Page

EXHIBITS—Continued:

pany and the Richmond Dredging Company)	1063
Cummins Exhibit 1 (Contract for the Improvement of San Rafael Creek, Dated April 15, 1908, Between the State of California and the California Reclamation Company)	1036
Cummins Exhibit No. 2 (Lease Dated June 23, 1908, from the Richmond Dredging Company to the California Reclamation Company)	473
Cummins Exhibit No. 3 (Contract Dated February, 1910, Between the Standard American Dredging Company and the Richmond Dredging Company)	1051
Cummins Exhibit No. 4 (Contract Dated February 26, 1910, Between the Standard American Dredging Company and the Richmond Dredging Company)	1057
Libelant's Exhibit No. 1—Musladin Examination (Report on the Condition of Samson Engines)	129
Libelant's Exhibit No. 2—Musladin Examination (Report Dated October 12, 1910, from William Musladin to Mr. Goodin)	130
Libelant's Exhibit 3—Wernse Examination (Contract Dated October 18, 1909, Between the Richmond Dredging Com-	

Index.

Page

EXHIBITS—Continued:

pany and Standard American Dredging Company)	1033
Libelants' Exhibit Connor 1 (Letter Dated San Francisco, Cal., May 26, 1909, from the Standard American Dredging Company, by W. A. H. Connor, to the Atchison, Topeka & Santa Fe Railway Company)	647
Libelants' Exhibit Connor 2 (Letter Signed by the Standard American Dredging Company, by W. A. H. Connor).....	652
Libelants' Connor Exhibit "A" (Letter from R. A. Perry to W. A. H. Connor) ..	686
Wernse Exhibit "A" in Rebuttal (Letter Dated February 9, 1910, from Richmond Dredging Company to Standard American Dredging Company)	701
Memorandum Opinion as to Second Amended Libel, etc.....	66
Notice of Appeal	1020
Notice of Motion for Leave to File Supplemental Answer and Introduce Evidence in Support Thereof	67
Notice of Motion for Order Releasing Dredger..	13
Notice of Motion to Strike Out Second Amended Libel	62
Opinion	1001
Opinion, Memorandum, as to Second Amended Libel, etc.....	66

Index.	Page
Order Directing Transmission of Original Exhibits to Circuit Court of Appeals.....	1028
Order Extending Time to December 13, 1912, to File Apostles on Appeal.....	1030
Order for Release of Dredger, etc.....	17
Order Granting Motion to File Supplemental Answer, etc.....	100
Order Referring Cause to U. S. Commissioner to Take and Report Testimony, etc.....	101
Order Submitting Cause.....	102
Order Submitting Exceptions, etc.....	66
Second Amended Libel, etc.....	24
Statement of Clerk U. S. District Court.....	3
Stipulation and Order as to Record on Appeal..	12
Supplemental Answer	68
Supplemental Answer—Standard American Dredging Company	97
Supplemental Libel and Complaint.....	32
Testimony Taken Before Jas. P. Brown, U. S. Commissioner	452
TESTIMONY ON BEHALF OF LIBELANT:	
BETTS, GEORGE HIRAM.....	152
Cross-examination	163
Redirect Examination	203
CUTTING, H. C.....	148
Recalled	204
Cross-examination	232
Redirect Examination	245
Recalled in Rebuttal.....	709
Cross-examination	726
Recalled in Rebuttal.....	740

Index.

Page

TESTIMONY ON BEHALF OF LIBELANT

—Continued:

MUSLADIN, MATTHEW WILLIAM...	103
Cross-examination	108
Redirect Examination	128
Recross-examination	133
WERNSE, H. W.....	133
Recalled in Rebuttal	697
Cross-examination	703
Redirect Examination	705

TESTIMONY ON BEHALF OF CLAIMANT
AND RESPONDENT:

BARKER, J. C.....	573
Cross-examination	581
CONNOR, W. A. H.....	593
Cross-examination	606
Redirect Examination	695
Recross-examination	696
Recalled in Surrebuttal.....	705
Cross-examination	705
Recalled in Surrebuttal.....	734
Cross-examination	735
CUMMINS, CLAUDE	452
Cross-examination.....	480
HANNAH, RUPERT	311
Cross-examination	319
Redirect Examination	331
Recross-examination	332
Further Redirect Examination	334
HARDING, AUGUST	245

TESTIMONY ON BEHALF OF CLAIMANT AND RESPONDENT:	
Cross-examination	267
Redirect Examination	311
KNIGHT, W. J.....	335
Cross-examination	356
Redirect Examination	436
Recross-examination	444
MORRISON, JAMES	517
Cross-examination	527
Redirect Examination	560
Recross-examination	565

[Appellant's Designation Under Rule 23.]

In the United States Circuit Court of Appeals, Ninth Circuit.

2208.

RICHMOND DREDGING COMPANY (a Corporation),

Libellant and Appellant,
vs.

STANDARD AMERICAN DREDGING COMPANY (a Corporation), et al.,

Respondents.

NOTICE TO APPELLEES.

The appellees in the above cause and their proctors will please take notice:

That appellants intend to rely on each and every of their assignments of error on file in the above appeal, and designate the following parts of the apostles on appeal as being necessary for the determination thereof, to wit:

All of said apostles, excepting only the following original exhibits:

Libellant's Exhibits Nos. 1 and 2.

Libellant's Exhibits "Connor" Nos. 1, 2 and "A."

Libelant's Exhibit Wernse's Exhibit "A" in Rebuttal.

Claimants' Exhibits Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19 and 20, which are already written out in full in the testimony and appear where offered and received in evidence.

Omit all orders extending time to file apostles on appeal, and print in the place and stead thereof orders given and made extending the time to file the apostles on appeal in this court, which are on file in the court, extending such time to and including the 13th day of December, 1912.

Omit Claimants' Exhibits Nos. 1, 2 and 3.

Omit the printing of any other original exhibit where such exhibit is set forth in full in the testimony.

San Francisco, California, January 23d, 1913.

Yours truly,

WM. H. H. HART,

Proctor for Libellant and Appellant.

H. W. HUTTON,

Of Counsel.

Receipt of a copy of the within Notice to Appellees is hereby admitted this 23d day of January, 1913.

J. S. SPILMAN,

IRA S. LILLICK,

Proctors for Respondents and Appellees.

[Endorsed]: No. 2208. In the United States Circuit Court of Appeals, Ninth Circuit. Richmond Dredging Company (a Corporation), Libellant and Appellant, vs. Standard American Dredging Company (a Corporation) et al., Respondents and Appellees. Notice to Appellees. Filed Jan. 29, 1913. F. D. Monckton, Clerk.

Statement of Clerk U. S. District Court.

*In the District Court of the United States in and for
the Northern District of California, First Division.*

No. 15,072.

**RICHMOND DREDGING COMPANY (a Corpora-
tion),**

Libelant,

vs.

Dredger "RICHMOND NO. 1" and STANDARD
AMERICAN DREDGING COMPANY (a
Corporation),

Respondents.

PARTIES.

LIBELANT: Richmond Dredging Company, a Corporation.

RESPONDENTS: Dredger "Richmond No. 1" and Standard American Dredging Company, a Corporation. [A*]

CLAIMANTS: Standard American Dredging Company, a Corporation, California Reclamation Company, a Corporation, and Atlas Gas Engine Company, a Corporation.

PROCTORS.

FOR LIBELANT: J. L. Taisher, Esquire, San Francisco, California. (J. L. Taisher, Esquire, was withdrawn from the case by libelants and substituted by) Wm. H. H. Hart, Esquire, San Francisco, California.

*Page-initial appearing at foot of page of original certified Record.

RESPONDENTS: James S. Spilman, Esquire, and Ira S. Lillick, Esquire, San Francisco, California.

CLAIMANTS: James S. Spilman, Esquire, and Ira S. Lillick, Esquire, San Francisco, California.

1910.

Sept. 2. Filed Verified Libel for possession of Dredger and damages, etc. **[B]**

Sept. 2. Issued Monition for attachment of the Dredger "Richmond No. 1," etc., and which said Monition was afterwards on the 6th day of September, 1910, returned and filed with the following return of the United States Marshal for the Northern District of California, endorsed thereon:

"In obedience to the within monition, I attached the Dredger Richmond #1 therein described, on the 3d day of September, 1910, and have given due notice to all persons claiming the same that this Court will, on the thirteenth day of September, 1910 (if that day be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to trial and condemnation thereof, should no claim be interposed for the same. I further return that I handed to and left a

copy of this Monition with W. J. Knight, the captain and person in charge of said Dredger Richmond No. 1 and posted a notice of Attachment on said Dredger Richmond #1 and placed J. W. Anthony as keeper thereof, at Walnut Grove, California, on said 3d day of September, 1910.

C. T. ELLIOTT,
United States Marshal.
By B. F. Towle,
Office Deputy.

San Francisco, Cal., Sept. 6, 1910."

Sept. 2. Issued Citation for appearance of Standard American Dredging Company, a corporation and which said [C] Citation was afterwards, on the 6th day of September, 1910, returned and filed with the following return of the United States Marshal for the Northern District of California, endorsed thereon:

"I have served this Writ personally by copy on the Standard American Dredging Company, a corporation, by handing to and leaving a copy thereof with C. Cummins, the Vice-president of the said Standard American Dredging Company, a corporation, at San Francisco, Cali-

fornia, on this 6th day of September, 1910, *A. D. 190.*

C. T. ELLIOTT,
U. S. Marshal.
By B. F. Towle,
Deputy Marshal."

Sept. 7. Filed Claim of Standard American Dredging Company, a corporation (claiming Richmond Dredger No. 1, her engines, boilers, etc.).

Sept. 12. Filed Notice of Motion (on behalf of claimants) for release of Richmond Dredger No. 1.

Sept. 13. Order libelant allowed to amend Process herein. Further Order that Dredger Richmond No. 1 be released upon respondent giving a Bond in the sum of Forty Thousand Dollars, for the return of said Dredger to Owners in as good condition, etc.

Sept. 13. Issued Amended Monition, which was on the 27th day of September, 1910, returned and filed with the following return of the United States Marshal endorsed thereon:

"I hereby return that I received the within Amended Monition on the 13th day of September [D] 1910, and in obedience to the command therein contained, I cited and admonished the Standard Ameri-

can Dredging Company that it appear before the United States District Court in and for the Northern District of California, on the 27th day of September, 1910, at 10 o'clock in the forenoon of that day, then and there to answer the libel and to make its allegations **in that** behalf. That said citation was served upon said Standard American Dredging Company, by handing a copy of this Monition to R. A. Perry, the President of the Standard American Dredging Company, personally, at San Francisco, in said District, on said 13th day of September, 1910.

I further return that heretofore, to wit, on the 2nd day of September, 1910, under a Monition issued out of said court and in this case, I attached the Dredger Richmond No. 1, at Walnut Grove, Sacramento County, in said District, and on that day took the same into my custody and placed a keeper in charge thereof; that said property remained in my custody and in charge of said keeper up to and including the 14th day of September, 1910, when the Standard American Dredging Company claimed said

Dredger Richmond No. 1 and entered into and executed an Admiralty Stipulation in the sum of Forty Thousand Dollars (\$40,000.00), whereupon I immediately released said Dredger from my custody.

San Francisco, Cal., Sept. 20, 1910.

C. T. ELLIOTT,

U. S. Marshal.

By B. F. Towle,

Office Deputy." [E]

Sept.	14.	Filed Bond in the sum of Forty Thousand Dollars for the release of the Dredger Richmond No. 1, with the Pacific Coast Casualty Company, as surety, and which said Bond was duly approved by Judge John J. De Haven, on said 14th day of September, 1910.
Sept.	23.	Filed claimant's (Standard American Dredging Company) Exceptions to Libel.
Oct.	7.	Filed Claim of California Reclamation Company, a corporation (as to a certain gas engine on said Dredger Richmond No. 1).
Oct.	7.	Filed claimant's (Standard American Dredging Company) Exceptions to Libel.
Oct.	7.	Filed Claim of Atlas Gas Engine Com-

pany, a corporation (as to a certain gas engine).

1910.

Nov. 19. The Exceptions to Libel heretofore filed herein this day came on for hearing before the District Court of the United States for the Northern District of California, Judge R. S. Bean, presiding.

Nov. 21. Order Exceptions numbered 1, 2, 3, and 6 sustained and Exceptions 4 and 5 overruled.

Dec. 1. Filed Amended Libel.

Dec. 10. Filed Exceptions to Amended Libel (Standard American Dredging Company).

1911.

Feb. 14. The Exceptions to the Amended Libel this day came on for hearing in the District Court of the United States for the Northern District of California, and submitted to Judge E. S. Farrington. [F]

Feb. 15. Order Exception II section (a) and (b) sustained and Exceptions I and II section (c) overruled.

March 9. Filed Second Amended and Supplemental Libel.

March 28. Filed Exceptions to Second Amended and Supplemental Libel.

March 28. Filed Notice of Motion to Strike out

Second Amended and Supplemental Libel.

June 5. The Exceptions to the Second Amended and Supplemental Libel this day came on for hearing in the District Court of the United States for the Northern District of California, before the Honorable John J. De Haven, Judge, and were argued and submitted.

June 14. Filed Memorandum Opinion Overruling Exceptions to Second Amended and Supplemental Libel.

August 1. Filed Answer of Standard American Dredging Company to Second Amended and Supplemental Libel.

August 1. Filed Answer of Atlas Gas Engine Company to Second Amended and Supplemental Libel.

August 1. Filed Answer of California Reclamation Company to Second Amended and Supplemental Libel.

Sept. 28. By consent of all parties, order cause referred to United States Commissioner Jas. P. Brown, at San Francisco, to take testimony and report same to the Court.

Nov. 15. Filed two volumes of Testimony taken before a United States Commissioner on Reference.

Nov. 15. Filed Deposition of Raymond A.

Perry taken before United States
Commissioner on reference.

Nov. 20. Filed Notice of Motion for leave to
file Supplemental Answer, etc.
[G]

Nov. 24. A hearing was this day had before the
Honorable John J. De Haven,
Judge of the District Court of the
United States for the Northern Dis-
trict of California, and the motion
to file Supplemental Answer, etc.,
was duly granted.

Nov. 24. Filed Supplemental Answer of Stand-
ard American Dredging Company.

Nov. 24. A hearing was then had before the
said Judge on the issues raised by
said Supplemental Answer and con-
tinued to December 4th, to be sub-
mitted on briefs.

Dec. 4. A hearing was this day had before the
Honorable John J. De Haven, Judge
of the District Court of the United
States for the Northern District of
California, and the cause submitted
to the Court on briefs filed.

1912.

January 15. Filed Opinion—Ordered that Decree
be entered in favor of libelant, etc.

Feb. 14. Filed Judgment and Decree.

August 12. Filed Notice of Appeal.

August 28. Filed Assignment of Errors. [H]

[Title of Court and Cause.]

Stipulation and Order as to Record on Appeal.

It is hereby stipulated and agreed that the apostles on this appeal to the above court shall be made up as follows, and shall contain and consist of the following papers and matters:

- (1) A caption as required by subdivision (1) of Article 4 of the Rules in Admiralty, of the above entitled Court, adopted May 21, 1900.
- (2) All the pleadings commencing with and following the second amended and supplemental libel, with the exhibits annexed thereto.
- (3) All of the claims.
- (4) All of the testimony and other proofs adduced in the cause.
- (5) The motion for order releasing the dredger "Richmond No. 1" and the affidavit annexed to the same.
- (6) The order made upon such motion.
- (7) The Stipulation (Bond) given on release of the dredger "Richmond No. 1," from the custody of the marshal.
- (8) The notice of motion for an order to strike out the second amended libel and supplemental libel, and the order made on such notice of motion.
- (9) All the opinions of the Court.
- (10) The final decree, and the notice of appeal.
- (11) The cost bills, and the assignments of error.
- (12) Omit the caption from all papers bearing a caption except the first bearing a caption and insert

in the place and stead of each caption where admitted the words (Title of Court and Cause).

Dated September 30, 1912.

W. H. H. HART,

Proctor for Libelant and Appellant.

IRA S. LILLICK,

J. S. SPILMAN,

Proctors for Respondent, Claimants and Appellees.

It is so ordered.

Dated October 1st, 1912.

JOHN J. DE HAVEN,

Judge. [1*]

[Endorsed]: Filed Oct. 1, 1912. Jas. P. Brown,
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

[Style of Court, No. and Title of Cause.]

Notice of Motion for Order Releasing Dredger.

NOTICE OF MOTION.

To the Libelant Above Named, and to J. L. Taugher,
Esquire, Its Proctor:

You, and each of you, are hereby notified that on Monday, the twelfth day of September, 1910, at ten o'clock A. M., or as soon thereafter as proctors can be heard, a motion will be made in the courtroom of the above-entitled court on the third floor of the United States Postoffice Building, on the northwest corner of Seventh and Mission Streets, in the City and County of San Francisco, State of California, for an order directing that the dredger "Richmond No. 1," now in the custody of the United States Mar-

*Page-number appearing at foot of page of original certified Record.

shal for the said Northern District of California, be released from the custody of said Marshal upon the filing with the said Marshal of an admiralty stipulation, with good and sufficient surety or sureties thereon, in an amount to be fixed by this Honorable Court, to be conditioned that the claimant herein shall abide by all orders of the Court herein, interlocutory or final, and pay the amount awarded by the final decree rendered by this court, or by any appellate court if an appeal intervene, with interest, and for such other and further order or relief as may be just.

Upon the hearing of the said motion, the libel, and claim and all proceedings and records in the above-entitled cause, will be used, as well as the affidavit hereto attached.

Dated: September 10, 1910.

Yours, etc.,

IRA S. LILLICK,

J. S. SPILMAN,

Proctors for Standard American Dredging Company, Claimant. [3]

[Style of Court, No. and Title of Cause.]

Northern District of California,—ss.

W. A. H. Connor, being first duly sworn, deposes and says:

That he is an officer, to wit, the secretary and the treasurer of Standard American Dredging Company, a corporation, claimant in the above-entitled cause, and makes this affidavit for and on behalf of said corporation, claimant;

That at the time of the seizure of the dredger "Richmond No. 1" by the Marshal of the United States for the Northern District of California under process issued in the above-entitled cause, the said dredger "Richmond No. 1" was, and ever since on or about the 18th day of October, 1909, had been, in the possession of said Standard American Dredging Company, claimant, under the terms of a charter-party and an agreement made and entered into between Richmond Dredging Company, a corporation, the libelant herein, and the said Standard American Dredging Company, claimant;

That at the time of the seizure of said dredger by the marshal, as aforesaid, the said dredger was, and ever since on or about July 30, 1910, had been, in use by said Standard American Dredging Company, claimant, in taking material from the bed of the Sacramento River, and therewith constructing a roadbed for the Sacramento Southern Railroad at Walnut Grove, Sacramento County, California, under a contract between the Southern Pacific Company, a corporation, and said Standard American Dredging Company;

That if the said claimant be not permitted to continue to use said dredger during the pendency of this action, the building of said roadbed will be hindered and delayed, and said claimant will be unable to complete its said contract with said **Southern Pacific** Company, and said Southern Pacific [4] Company and said claimant will suffer great and irreparable damage, loss and expense;

That the value of said dredger does not exceed the

sum of Thirty Thousand Dollars (\$30,000);

And affiant further says that as an officer of said corporation, claimant, for and on its behalf, affiant has fully and fairly stated the facts in the above-entitled action to Ira S. Lillick, Esq., and James S. Spilman, Esq., proctors for said claimant, and after such statement, affiant is advised by said proctors, and verily believes, that said Standard American Dredging Company, claimant, has a good and substantial defense on the merits to said action; and that at the time of the filing of the libel herein, said Standard American Dredging Company, claimant, had, and now has, a right to the possession and use of said dredger "Richmond No. 1" and to use the same for the completion of its said contract with the Southern Pacific Company; that the amount of compensation to become due to libelant herein for the use of said dredger "Richmond No. 1" is a matter in dispute between said libelant and said claimant, and cannot in any event exceed the sum of Fifty Dollars (\$50) a day, and that said claimant has offsets and counterclaims against said libelant upon other causes arising out of other transactions in excess of any sum due said libelant for the use of said dredger.

W. A. H. CONNOR.

Subscribed and sworn to before me this 10th day of September, A. D. 1910.

[Seal] CHARLES EDELMAN,
Notary Public in and for the City and County of San
Francisco, State of California
My commission expires April 9, 1914.

[Endorsed]: Filed Sep. 12, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [5]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Tuesday, the 13th day of September, in the year of our Lord one thousand nine hundred and ten. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 15,072.

RICHMOND DREDGING COMPANY
vs.

Dredger "RICHMOND NO. 1" et al.

Order for Release of Dredger, etc.

On motion of Ira S. Lillick, Esq., proctor for respondent and claimant herein, by the Court ordered that the Standard American Dredging Company, a corporation, respondent, be, and it is hereby allowed ten days in which to plead to the libel herein. On motion of J. L. Taugher, Esqr., proctor for libelant, by the Court ordered that said libelant be, and it is hereby allowed to amend the process issued herein.

The motion for an order releasing vessel herein upon giving an admiralty stipulation, this day came on for hearing, and after hearing proctors, by the Court ordered that the dredge seized herein under process heretofore issued may be released upon respondent giving a bond in the sum of Forty Thou-

sand (\$40,000) dollars, conditioned for the return of said dredge to the owners thereof in as good condition as it now is and for all damages which may have been sustained by reason of its detention. [6]

[Style of Court.]

Bond for Release of Dredger.

KNOW ALL MEN BY THESE PRESENTS: THAT we, STANDARD AMERICAN DREDGING COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, as principal and PACIFIC COAST CASUALTY COMPANY, a corporation, duly organized and existing under the laws of the State of California, as surety, are held and firmly bound unto CHARLES T. ELLIOTT, Esq., Marshal of the United States for the Northern District of California, in the sum of FORTY THOUSAND DOLLARS (\$40,000), to be paid to the said Marshal, Charles T. Elliott, his successors, executors, administrators and assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our, and each of our, successors and assigns, jointly and severally, firmly by these presents.

SEALED WITH OUR SEALS, and dated the 13th day of September, in the year of our Lord one thousand nine hundred and ten.

WHEREAS, a libel has been filed in the District Court of the United States for the Northern District of California on the second day of September, in the year of our Lord one thousand nine hundred and ten,

by the RICHMOND DREDGING COMPANY, a corporation, libellant, against the dredger "Richmond No. 1," and against the above bounden Standard American Dredging Company, for the sum of \$1250, and possession of said dredger, on which process of attachment has been issued, and the said dredger "Richmond No. 1" is in the custody of the said marshal under the said attachment, and the said Standard American Dredging Company, claimant of said dredger, has applied for a discharge of said dredger "Richmond No. 1" from the custody of the said marshal, and has filed a claim claiming the right to the possession of said dredger "Richmond No. 1," [7] and has filed a stipulation for the claimants' costs pursuant to the rules and practice of said court; and the said court having duly given and made an order that said dredger be discharged from the custody of said marshal upon the filing of a bond, in the amount and on the conditions herein contained:

NOW, THEREFORE, the condition of this obligation is such that if the above-bounden Standard American Dredging Company, claimant of said dredger, shall answer, abide by and perform the decree of this Court, and return the said dredger in the same condition in which it now is and in good repair, and shall pay all damages which may be sustained by reason of the detention of said dredger,

then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

STANDARD AMERICAN DREDGING COMPANY.

[Seal] By CLAUDE CUMMINS,
Vice-Pres.

PACIFIC COAST CASUALTY COMPANY.

[Seal] By CARL G. BROWN,
By _____,
Agent and Attorney in Fact.

Taken and acknowledged before me this 13th day of Sept., 1910.

[Seal] FRANCIS KRULL,
United States Commissioner, North'n Dist. of California.

The within and foregoing admiralty stipulation is hereby approved as to form, amount and sufficiency.

Dated: September 14, 1910.

JOHN J. DE HAVEN,
District Judge.

[Endorsed]: Filed Sep. 14, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [8]

[Style of Court, and Title of Cause.]

Claim of Standard American Dredging Company.

And now, STANDARD AMERICAN DREDGING COMPANY, a corporation, bailee of the dredger "Richmond No. 1," her engines, boilers, machinery and equipment under a charter-party and agreement intervening for its own interests in the

said dredger "Richmond No. 1," her engines, boilers, machinery and equipment, under the said charter-party and agreement, appears before this Honorable Court and makes claim to the said dredger, her engines, boilers, machinery and equipment, as the same are attached by the marshal under process of this Court at the instance of Richmond Dredging Company, a corporation, and the said Standard American Dredging Company, a corporation, avers that it was in the possession of the said dredger at the time of the attachment thereof, and that it is the true and *bona fide* bailee of the said dredger under the charter and agreement hereinbefore referred to, and that no other person is entitled to the possession thereof. Wherefore, it prays to defend accordingly.

STANDARD AMERICAN DREDGING CO.

By W. A. H. CONNOR,
Secretary and Treasurer.

Sworn to and subscribed this 7th day of September,
A. D. 1910, before me.

FRANCIS KRULL,

Deputy Clerk U. S. District Court, Northern Dis-
trict of California.

Northern District of California,—ss.

W. A. H. Connor, being duly sworn, says: That he is an officer, to wit, the secretary and treasurer of the Standard American Dredging Company, a corporation, and that he is duly authorized to verify the foregoing claim for [9] said Standard American Dredging Company; that the foregoing claim is true of his own knowledge.

W. A. H. CONNOR.

Sworn to before me this 7th day of September, A. D. 1910.

[Seal] FRANCIS KRULL,
Deputy Clerk U. S. District Court, Northern District of California.

[Endorsed]: Sep. 7, 1910. Jas. P. Brown, Clerk.
By Francis Krull, Deputy Clerk. [10]

[Style of Court, Number and Title of Cause.]

Claim of Atlas Gas Engine Company.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The claim of the Atlas Gas Engine Co., a corporation, to that certain 4 cylinder Atlas gas engine of 12-inch bore 12-inch stroke, with complete equipment, now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Richmond Dredging Co., a corporation, alleges:

That Atlas Gas Engine Co., a corporation, is the true and *bona fide* owner of the said gas engine and her equipment and that no other person is owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to said claimant and otherwise right and justice to administer in the premises.

A. Warenskjold deposes and says that he is an officer, to wit, the assistant manager of the corporation claimant above named and as such is authorized

to verify the claim on behalf of said corporation, and that at the time of the said arrest of said engine claimant was in possession of the same as the lawful owner thereof.

A. WAREN SKJOLD.
JAS. S. SPILMAN and
IRA S. LILLICK,
Proctors for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 7th day of October, A. D. 1910.

[Seal] M. T. SCOTT,
Deputy Clerk U. S. District Court, Northern District
of California.

[Endorsed]: Filed Oct. 7, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [11]

[Style of Court, Title and No. of Cause.]

Claim of California Reclamation Company.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States for the
Northern District of California:

The claim of California Reclamation Co., a corporation, to that certain 4 cylinder 150 horse-power marine gas engine belonging to and being a part of the equipment of the launch "Wink," now in the custody of the marshal of the United States for the said Northern District of California, at the suit of Richmond Dredging Co., a corporation, alleges:

That said California Reclamation Co. is the true and *bona fide* owner of the said gas engine and that

no other person is owner thereof.

Wherefore, this claimant prays that this Honorable Court will be pleased to decree a restitution of the same to said claimant and otherwise right and justice to administer in the premises.

W. A. H. Connor deposes and says that he is an officer, to wit, the secretary of the corporation claimant herein, and is authorized to verify this claim on behalf of said corporation, and that at the time of the said arrest thereof the said corporation was in possession of the same as the lawful owner thereof.

W. A. H. CONNOR,
JAS. S. SPILMAN and
IRA S. LILLICK,
Proctors for Claimant.

Northern District of California,—ss.

Subscribed and sworn to before me this 7th day of October, A. D. 1910.

[Seal] M. T. SCOTT,
Deputy Clerk U. S. District Court, Northern District
of California.

[Endorsed]: Filed Oct. 7, 1910. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [12]

*In the District Court of the United States for the
Northern District of California.*

IN ADMIRALTY.

Second Amended Libel, etc.

To the Honorable J. J. DE HAVEN, Judge of
the District Court of the United States in and
for the Northern District of California:

The second amended libel of Richmond Dredging Company, a corporation, organized and existing under the laws of the state of California, against the dredger "Richmond No. 1," her engines, boilers, machinery and equipment, and against Standard American Dredging Company, and also against all persons lawfully intervening for their interest therein, in a cause civil and maritime of possession and for damages, showeth:

I.

That during all of the times herein mentioned Richmond Dredging Company was and now is a corporation duly organized and existing under the laws of the State of California, and libelant is informed and believes, and therefore alleges, that during all of the said times the respondent Standard American Dredging Company was and now is a corporation duly organized and existing under the laws of the State of New Jersey and entitled to do business in the State of California and maintaining an office in the city of San Francisco.

II.

That during all of the times herein mentioned Richmond Dredging Company above mentioned was and now is the true and only owner of the dredger, "Richmond No. 1," her engines, boilers, machinery and equipment, now and at all times herein mentioned within the Northern District of California, and said Richmond Dredging Company at the time of the filing of the original libel herein, and at all times since then, and at the time of the filing of this amended libel, was and now is the true and lawful

owner of and entitled to the immediate possession of the said dredger "Richmond No. 1," her engines, boilers, machinery and equipment. [13]

III.

That said dredger "Richmond No. 1" is a vessel consisting of a hull and superstructure, containing a galley and cabin accommodation for her crew, also all machinery necessary for and usual in an hydraulic dredger; that the said dredger "Richmond No. 1" is built to operate afloat and not otherwise, and during all the times herein mentioned has been and now is operated afloat and is equipped to navigate upon the ocean and other navigable waters.

IV.

That the possession of the said dredger "Richmond No. 1" is now and has been since the 15th day of August, 1910, unlawfully and wrongfully withheld from libelant by the Standard American Dredging Company on an alleged claim of right to the possession of said dredger, under a certain charter-party thereof, made on or about the 26th day of February, 1910, in writing between the Richmond Dredging Company, the libelant herein, as owner and the Standard American Dredging Company.

That such claim to the possession of the said dredger was and is without foundation in fact or in law; that said charter-party expired, terminated and ended on the 15th day of August, 1910, and any right to the possession of the said dredger "Richmond No. 1" that the Standard American Dredging Company may have had prior to August 15th, 1910, ceased, terminated and ended on said 15th day of August, 1910.

That in and by said charter-party the Standard American Dredging Company leased and rented unto the Richmond Dredging Company its electric dredger "Oakland" for the term of sixty days from the date thereof, and the Richmond Dredging Company leased and rented unto the Standard American Dredging Company its dredger "Richmond No. 1" for sixty days from the date thereof on the terms and conditions in said charter-party provided, to which charter-party reference is hereby made and the same is made a part hereof. Among other things [14] in the said charter-party it was provided that if at the expiration of the said term of sixty days the Standard American Dredging Company had not found other work that it desired to do with its dredger "Oakland," the said charter-party might be extended as long as the Richmond Dredging Company had use for the dredger "Oakland" in filling certain lands therein mentioned to the extent of 400,000 cubic yards of material, or until the Standard American Dredging Company terminated the said charter-party. It was further provided in the said charter-party that if the Standard American Dredging Company found work which it desired to do by use of its dredger "Oakland," it might during the term of said charter-party or any extension thereof terminate said charter-party and the right of the Richmond Dredging Company to use dredger "Oakland" by giving the Richmond Dredging Company fifteen days' notice of such intended termination and returning to the Richmond Dredging Company its dredger "Richmond No. 1," and the Stand-

ard American Dredging Company therein agreed to pay fifty dollars per day for each day it should retain possession of said dredger "Richmond No. 1," after such termination of the above mentioned charter-party and the return to it of its said dredger "Oakland," all of which will more fully appear by reference to the charter-party as before mentioned, a copy of which charter-party and of the former charter-parties of said dredgers mentioned therein are attached to this amended libel and marked respectively Exhibit "A," "B," and "C."

It was further agreed and understood by the parties to said charter-party and said charter-party was made upon the express condition that the Standard American Dredging Company would have no right to the use of the dredger "Richmond No. 1," after it terminated the right of the Richmond Dredging Company to use the dredger "Oakland," and after said dredger "Oakland" had been returned to said Standard American Dredging Company as therein provided.

That thereafter on the 12th day of August, 1910. Standard American Dredging Company terminated the lease and charter-party of the dredger [15] "Oakland" and demanded the return thereof; that the Richmond Dredging Company on or about the 14th day of August, 1910, in accordance with such demand returned and delivered the said dredger "Oakland" to said Standard American Dredging Company, and then and thereupon became entitled to the immediate possession of its dredger "Richmond No. 1," but the Standard American Dredg-

ing Company refused and neglected and still refuses and neglects to return the dredger "Richmond No. 1" to the Richmond Dredging Company, the libelant herein; that thereafter on the 16th day of August 1910, and on the 1st of September, 1910, and on each of the said times Richmond Dredging Company demanded from the Standard American Dredging Company the return of the dredger "Richmond No. 1," and notified said Standard American Dredging Company that the Richmond Dredging Company had use for and required the dredger "Richmond No. 1," but the Standard American Dredging Company refused and neglected, and still refuses and neglects, to return the dredger "Richmond No. 1," her engines, boilers, machinery and equipment. A copy of said demand made by Richmond Dredging Company on Standard American Dredging Company of September 1st, 1910, is hereto annexed, marked Exhibit "D"; that said Standard American Dredging Company still holds possession of said dredger "Richmond No. 1," her engines, boilers, machinery and equipment, against the will of this libelant, and notwithstanding repeated demands for the possession thereof made upon said Standard American Dredging Company by this libelant, to the great damage of this libelant.

V.

That the said dredger "Richmond No. 1," and its engines, boilers, machinery and equipment, is of the value of Forty Thousand (\$40,000.00) Dollars and upward.

VI.

That said libelant has been damaged at the time of the filing of the original libel herein in the sum of twelve hundred and fifty (\$1250.00) dollars by the detention of the said dredger "Richmond No. 1" [16] as aforesaid by the Standard American Dredging Company, particulars of which damage are as follows: Loss of the use of said dredger from August 15th, 1910, up to the date of the filing of the original libel herein on September 2d, 1910, to wit, eighteen days at fifty dollars per day . . . nine hundred dollars; attorney fees incurred by the libelant in endeavoring to recover possession of said dredger prior to filing the original libel herein, three hundred and fifty dollars, which amount of fees libelant has agreed to pay.

VII.

That prior to the commencement of this action the libelant demanded of Standard American Dredging Company possession of said dredger "Richmond No. 1," but Standard American Dredging Company has refused and neglected, and still refuses and neglects to deliver to Richmond Dredging Company possession of said dredger "Richmond No. 1," its engines, boilers, machinery and equipment.

VIII.

That the said dredger "Richmond No. 1" is now in the Northern District of California and within the jurisdiction of this Honorable Court.

That all and singular the premises are true and within the admiralty jurisdiction of this Honorable Court.

WHEREFORE this libelant prays that process of attachment in due form of law, according to the due course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against said dredger "Richmond No. 1," her engines, boilers, machinery and equipment, and that said Standard American Dredging Company and all persons having or claiming to have any right, title or interest therein may be cited to appear and show cause why possession of said dredger, her engines, boilers, machinery and equipment shall not be delivered to said libelant; that this Honorable Court will be pleased to decree that possession of said dredger "Richmond No. 1," her engines, boilers, machinery and equipment be delivered to Richmond [17] Dredging Company; that a monition according to the practice of this Court may issue against Standard American Dredging Company citing said Standard American Dredging Company to appear and answer on oath the matters aforesaid; and that this Honorable Court will be pleased to decree the payment by Standard American Dredging Company to Richmond Dredging Company of the sum of twelve hundred and fifty (\$1250.00) dollars above mentioned, together with costs; and that said libelant have such other and further relief in the premises as in law and justice it may be entitled to receive.

J. L. TAUGHER,
Proctor for Libelant. [18]

[Title of Court.]

Supplemental Libel and Complaint.

To the Honorable J. J. DE HAVEN, Judge of the District Court of the United States for the Northern District of California:

The Supplemental Libel and Complaint of the Richmond Dredging Company against the dredger "Richmond No. 1," her engines, boilers, machinery and equipment and against Standard American Dredging Company and against all persons intervening for their interest therein in a cause civil and maritime of possession and for damages, filed herein by leave of this Honorable Court first duly granted and obtained, showeth:

**FOR THE FIRST CLAIM OF DAMAGE
HEREIN AGAINST STANDARD AMERICAN DREDGING COMPANY.**

I.

The libelant herein repeats the allegations of its second amended libel attached hereto, verified and filed in this court herewith and refers again to the charter-party in said amended libel referred to and to the former charter-parties of the dredger "Richmond No. 1," and which are marked respectively Exhibits "A," "B," "C" to said amended libel.

II.

That under process issued by this Court and directed to the United States Marshal for the Northern District of California, the said marshal did on or about the second day of September, 1910, seize

and take possession of the said dredger "Richmond No. 1," her engines, boilers, machinery and equipment; that thereafter from said second day of September, 1910, the said marshal permitted the Standard American Dredging Company to use and operate the said dredger, up to the 14th day of September, 1910; that in order to acquire the use of the said dredger between said second day of [19] September, 1910, up to the said 14th day of September, 1910, on which date the process under which the marshal seized said dredger was returnable to this court, the Standard American Dredging Company deposited with the said marshal six hundred (\$600.00) dollars, for the use of the said dredger during such time, to wit, the sum of Fifty (\$50.00) dollars per day for each day that the Standard American Dredging Company be permitted by said marshal to use said dredger, on the condition that the said sum should be paid over by the said marshal to the libelant herein in case it should be thereafter determined by this Court that the libelant was entitled to the possession of the said dredger from the time same was seized as aforesaid by said marshal, and libelant is informed and believes that said six hundred (\$600.00) dollars is still in the possession of the said marshal pending the termination of this suit.

III.

That thereafter on or about the 14th day of September, 1910, the said dredger was by the order of this court, made on the application of the Standard American Dredging Company, released by the United States Marshal to the Standard American Dredging

Company on its filing in this court a bond in the sum of forty thousand (\$40,000.00) dollars, wherein the Standard American Dredging Company aforesaid is principal and the Pacific Coast Casualty Company, a corporation, is surety, the condition of which bond is as follows:

“NOW, THEREFORE, the condition of this obligation is such that if the above-bounden Standard American Dredging Company, claimant of said dredger shall answer, abide by and perform the decree of this Court, and return the said dredger in the same condition in which it now is and in good repair, and shall pay all damages which may be sustained by reason of the detention of said dredger, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.” [20]

IV.

That the Standard American Dredging Company upon the filing of the bond aforesaid procured the said dredger to be released into its possession by the marshal aforesaid on the 14th day of September, 1910, and at all times since that time Standard American Dredging Company has had possession of said dredger “Richmond No. 1,” and at all times since that time has detained and now detains the said dredger from and against the will of libelant herein, and during all of said time has deprived the libelant of the possession thereof.

That on the fifteenth day of August, 1910, and at all times since that time, the libelant herein was and now is the true and only owner of the dredger “Richmond No. 1,” her engines, boilers, machinery and

equipment, and at all of said times was and now is entitled to the possession thereof.

V.

That the libelant's right to the possession of said dredger at the time of the filing of the original libel herein, and at any or all times since that time was not inquired into or determined on the hearing of the said application to this Court of the Standard American Dredging Company to have possession of said dredger delivered to it, and the possession of the said dredger was given to said company on its said application and on its filing in this court said bond for forty thousand (\$40,000) dollars on the conditions as in said bond expressed, and amongst others that, said Standard American Dredging Company should answer, abide by and perform the decree of this Court and pay all damages that libelant might sustain by reason of any and all detention of said dredger from the libelant herein, to which bond reference is hereby made.

VI.

That the libelant herein resisted the application of the Standard American Dredging Company to this court to have said dredger released as aforesaid and the possession thereof delivered to it, and libelant at all times herein mentioned claimed and averred and now [21] avers that the Standard American Dredging Company was not entitled to the possession thereof at the time of the filing of the original libel herein nor at any time since then, but that the possession of said dredger at the time of the filing of the original libel herein and at all times since that time

belonged to Richmond Dredging Company, the libelant herein, and that Richmond Dredging Company has been deprived of the possession thereof during all of said times by Standard American Dredging Company.

VII.

That libelant has been damaged by such detention of the said dredger "Richmond No. 1" by the Standard American Dredging Company as set forth in this Supplemental Libel in the sum of nine thousand four hundred (\$9,400.00) dollars, particulars of which damage are as follows:

Loss of the use of the said dredger from the second day of September, 1910, until the day of the filing of the Supplemental Libel on March 9th, 1911, to wit, 188 days at fifty (\$50.00) dollars per day.

FOR THE SECOND CLAIM OF DAMAGE
HEREIN AGAINST STANDARD AMERICAN DREDGING COMPANY, THE LIBELANT ALLEGES:

That on or about the 25th day of April, 1910, the Richmond Dredging Company, above mentioned, entered into a certain contract in writing with Orlin Hudson, as Superintendent of Streets of the city of Richmond, State of California, acting for and on behalf of said city of Richmond, by the authority granted to him in that behalf under and by virtue of an act of the legislature of the State of California, entitled, "An act to provide for work upon streets, lanes, alleys, courts, places and sidewalks and for the construction of sewers within municipalities," approved March 18th, 1885, and all acts amendatory

thereof, the party to said contract of the second part; in and by said contract Richmond Dredging Company agreed to do [22] and perform certain street work under the terms and conditions in said contract specified, and to furnish the necessary material for the completion of such contract, in accordance with the terms thereof, which work consisted in excavating in certain streets and in filling certain other streets in the city of Richmond and as in the said contract more specifically provided, and for which work so to be done the Richmond Dredging Company was to be paid as follows: For all excavating work fifty cents per cubic yard, and for all filling work thirty-five cents per cubic yard; that in pursuance of the terms of said contract Richmond Dredging Company entered on the work therein specified and proceeded to fill and grade the streets as in said contract provided, and continued to perform strictly under the terms of said contract up to the fifteenth day of August, 1910.

That before the said contract was executed between Richmond Dredging Company and the said Superintendent of Streets of the city of Richmond it was agreed by and between the parties to the said agreement that the Richmond Dredging Company should furnish a bond in the sum of seven thousand (\$7,000.00) dollars with sufficient sureties, conditioned for the good, faithful and complete performance of said contract within the time mentioned in said contract, and in accordance with said agreement Richmond Dredging Company as principal and the American Bonding Company of Baltimore, a corpo-

ration, as surety, executed and delivered to said Superintendent of Streets their certain undertaking, whereby they jointly and severally bound themselves in the sum of seven thousand (\$7,000.00) dollars with the conditions thereunder written.

That the only practical way of doing the said filling on the streets designated in said contracts would be by depositing the material necessary on said streets by means of a suction dredger, and that fact was at all times herein mentioned well known to the Standard American Dredging Company; that at or about the time of the making of the above mentioned contract the Richmond Dredging Company notified the Standard American Dredging Company of its said contract [23] with the Superintendent of Streets of the city of Richmond; that at or about the time Standard American Dredging Company entered into the above-mentioned charter-party with Richmond Dredging Company for the use of the dredger "Oakland," as in said charter-party provided, Standard American Dredging Company knew that the Richmond Dredging Company would require the use of the dredger "Oakland" or of its said dredger "Richmond No. 1," to complete the said contract within the time required, and it was agreed and understood by and between the Standard American Dredging Company and the Richmond Dredging Company that if Standard American Dredging Company required the return to it of its dredger "Oakland," it would immediately deliver and surrender unto Richmond Dredging Company possession of its dredger "Richmond No. 1"; that Richmond Dredging Company

commenced performance of its contract with said Superintendent of Streets on or about the 26th day of April, 1910, depositing the material required by said contract by the use of the said dredger "Oakland" and Richmond Dredging Company continued performance under said contract with the said dredger "Oakland" up to on or about the fifteenth day of August, 1910, when the charter-party and lease of the dredger "Oakland" was terminated by the Standard American Dredging Company and its dredger "Oakland" returned to it by the Richmond Dredging Company.

That the Standard American Dredging Company wilfully, wantonly, unlawfully and maliciously deprived Richmond Dredging Company of the possession of its said dredger "Richmond No. 1," from on or about the second day of September, 1910, up to the date of the filing of this Supplemental Libel in and by means of an order of this Court dated on or about the fourteenth day of September, 1910, made on the application of the Standard American Dredging Company to this Court, on which application Standard American Dredging Company wilfully, wrongfully and maliciously stated and alleged that it was entitled to the possession of said dredger, well knowing that it had no good or valid claim or right to the possession thereof, as in said application alleged, and offering to file in this court a bond in the [24] sum of forty (\$40,000.00) thousand dollars, the full value of the said dredger conditioned among other things that said Standard American Dredging Company would answer, abide by and perform the decree

of this court in the libel brought by the Richmond Dredging Company for the possession of said dredger, and that Standard American Dredging Company would pay all damages that libelant might sustain by reason of detention of said dredger; that Standard American Dredging Company by such application and the filing of the bond aforesaid procured this Court to release the said dredger into its possession on its said wilfully false, fraudulent and unlawful claim to the right to the possession thereof without any adjudication of the rights of the respective parties having been made on Standard American Dredging Company, undertaking to abide by any decree of this Court to be thereafter made, and to pay any and all damages that Richmond Dredging Company might sustain by the detention of said dredger, in the event this Court should thereafter determine that such detention of the said dredger should not have been awarded to Standard American Dredging Company on such application.

That between the time the Richmond Dredging Company commenced performance under its said contract with the said Superintendent of Streets of the city of Richmond, until it was forced to cease work thereon and to suspend operations thereunder as aforesaid the Richmond Dredging Company furnished supplies and deposited on the said streets in accordance with the terms of said contract material of the value of ten thousand (\$10,000.00) dollars; that on or about the 12th day of October, 1910, the time for the performance under said contract by the Richmond Dredging Com-

pany was extended by the said Superintendent of Streets at the request of Richmond Dredging Company for a period of one hundred and eighty (180) days; that on or about the sixth day of March, 1911, and while Richmond Dredging Company was and is deprived of the use of its dredger and the same detained from it by the Standard American Dredging Company, Richmond Dredging Company entered into an agreement by way of compromise with [25] the said city of Richmond and the said Superintendent of Streets, wherein and whereby the Richmond Dredging Company agreed to forfeit and release and did therein and thereby forfeit and release unto the city of Richmond all claim that it might have against the city of Richmond for payment for work and labor done and material furnished and supplied under the contract as aforesaid amounting to ten thousand (\$10,000) dollars, on condition that the city of Richmond would release the said Richmond Dredging Company from further performance under said contract and discharge the said Richmond Dredging Company and its surety on the said bond from any and all liability thereunder; that the Richmond Dredging Company was so forced to relinquish and lose its claim against the city of Richmond for all work and labor done and materials furnished and supplied under said contract as aforesaid, because of the wanton, willful, wrongful and unlawful detention of the said dredger "Richmond No. 1" by Standard American Dredging Company to the damage of the Richmond Dredging

Company in the sum of Ten Thousand (\$10,000.00) Dollars.

AND FOR A FURTHER AND THIRD CLAIM OF
DAMAGE AGAINST SAID STANDARD
AMERICAN DREDGING COMPANY THE
LIBELANT ALLEGES:

That when said dredger "Richmond No. 1" was released by the United States Marshal for the Northern District of California on the order of this Court, as in this Supplemental Libel hereinbefore set forth, said "Richmond No. 1" had aboard her and as part of her complete machinery and equipment, two certain gas engines known and described as follows, to wit: (1) A certain four cylinder 150 horse-power marine gas engine. (2) A certain four cylinder Atlas gas engine, twelve-inch bore and twelve-inch stroke, and complete equipment.

That although the said engines were aboard of and in use by and formed an integral part of the dredger when the said dredger "Richmond No. 1" was released by this Court into the possession of said Standard American Dredging Company as aforesaid on the fourteenth [26] day of September, 1910, and the title and ownership of said dredger admitted by said Standard American Dredging Company in said application to be in Richmond Dredging Company, the libelant herein, and without any claim of ownership of said dredger having been made by said Standard American Dredging Company, and while the said dredger was in the possession of the Standard American Dredging Company under order of

this Honorable Court as aforesaid, the said Standard American Dredging Company removed or caused to be removed from the said dredger "Richmond No. 1" both of the engines above mentioned; that said engines so removed were worth about ten thousand (\$10,000) dollars at the time said dredger "Richmond No. 1" was released into the possession of the Standard American Dredging Company as aforesaid, on the 14th day of September, 1910; that said engines were removed without the consent of and against the will of the Richmond Dredging Company, the owner of the dredger "Richmond No. 1," her engines, boilers, machinery and equipment; that libelant is informed and believes, and therefore alleges, that said engines were removed by said Standard American Dredging Company without the consent or knowledge of this Honorable Court or of the United States Marshal of this district, and that the said engines were wilfully, wantonly and contumaciously removed by Standard American Dredging Company with wilful, wanton and utter disregard of the libelant's rights in the premises and with wilful, wanton and contumacious and contemptuous disregard of this Court and its authority in the premises, and to the damage of the libelant in the sum of ten thousand (\$10,000.00) dollars.

**AND FOR ANOTHER AND FOURTH CLAIM OF
DAMAGE HEREIN AGAINST THE SAID
STANDARD AMERICAN DREDGING COM-
PANY THE LIBELANT ALLEGES:**

That Standard American Dredging Company unlawfully, wantonly and maliciously deprived the

Richmond Dredging Company of the possession and use of its dredger "Richmond No. 1," as aforesaid, without the consent of the libelant and with the wrongful intent to [27] deprive libelant of the use thereof, and thereby caused libelant to suffer great loss and damage, and that because of the wrongful, wanton and unlawful acts of the Standard American Dredging Company, its officers, agents and servants above set forth, and its utter disregard of the rights of libelant in the premises in detaining said dredger as aforesaid and causing the damage as aforesaid, Standard American Dredging Company has become liable to pay punitive and exemplary damages for which libelant prays the sum of five thousand (\$5,000.00) dollars.

WHEREFORE, in addition to the claim set forth in libelant's Second Amended Libel hereto attached, the libelant claims under this Supplemental Libel:

1. The additional sum of nine thousand four hundred (\$9400.00) dollars specified in the first claim or item of damage in this Supplemental Libel set forth.
2. The further sum of ten thousand (\$10,000.00) dollars as set forth in the second item or claim of damage in said Supplemental Libel.
3. The further sum of ten thousand (\$10,000.00) dollars as in the third item or claim of damage specified in said Supplemental Libel.
4. The further sum of five thousand (\$5,000.00) dollars as set forth in the fourth claim or item of damage as in said Supplemental Libel specified and libelant prays:

That this Honorable Court will be pleased to decree payment by Standard American Dredging Company to Richmond Dredging Company of the sum of thirty-four thousand four hundred (\$34,400.00) dollars hereinabove mentioned, together with costs and prays that said additional and supplemental claims may be added to and included with its original claim as in libelant's Second Amended Libel set forth, and libelant further prays as in its said Amended Libel it has already prayed, and that libelant have such other and further relief in the premises as in law and in justice it may be entitled [28] to receive.

J. L. TAUGHER,
Proctor for Libelant.

Northern District of California,—ss.

Henry C. Cutting, being duly sworn, deposes and says: That he is the President of the Richmond Dredging Company, the libelant, that he has read the foregoing Second Amended Libel and Supplemental Libel and knows the contents thereof, and that the same are true of his own knowledge, except as to matter therein stated or alleged on information and belief, and as to those matters he believes them to be true.

H. C. CUTTING.

Sworn to before me this ninth day of March, 1911.

[Seal] FLORA HALL,
Notary Public in and for the City and County of San
Francisco, State of California. [29]

EXHIBIT "A"

This Agreement, made and entered into this ——
day of February, 1910, by and between the STAND-

ARD AMERICAN DREDGING COMPANY, a corporation, the party of the first part, and RICHMOND DREDGING COMPANY, a corporation, the party of the second part,

WITNESSETH:

Whereas, the party of the first part is the owner of the electric dredger "Oakland," and the party of the second part is desirous of hiring said dredger to be used for filling on certain lands at and near Richmond, California, under contract between the party of the second part and the Richmond Canal & Land Company and others, and

Whereas the party of the second part is the owner of the suction dredger called the "Richmond No. 1" now in the possession of the party of the first part under a charter between the parties hereto, bearing date the 18th day of October, 1909, and the party of the first part is desirous of continuing the possession and use of said dredger "Richmond No. 1" as hereinafter provided:

IT IS HEREBY AGREED

1. The party of the first part hereby lets and leases unto the party of the second part and the party of the second part hereby hires and takes from the party of the first part the said electric dredger "Oakland" to be used for the filling of the said lands, at and near Richmond, California, for the term of sixty (60) days from and after this date, at a minimum rental of eight hundred dollars (\$800), a month which shall pay for the use of said dredger "Oakland" not more than one shift, not exceeding

twelve (12) hours each day; and if at any time during said term, said dredger shall be operated more than twelve (12) hours in any day, the party of the second part shall pay the party of [30] the first part an additional rental at the rate of eight hundred dollars (\$800) a month for the extra time of operation.

2. The party of the first part agrees to deliver said dredger "Oakland" with her equipment, at Point Richmond, on or before the 26th day of February, 1910.

3. From the time of the receipt of said dredger by the party of the second part until the return of said dredger to the party of the first part, at the expiration of the term of this agreement, (or any extension of said term), the party of the second part shall be responsible to the party of the first part for the said dredger in any event, and agrees to return said dredger to the party of the first part at Richmond in as good order and condition as the same shall be at the beginning of the term of this agreement, reasonable wear and tear thereof, and damage by fire, only excepted.

4. The party of the second part also agrees that during the term of this agreement it will pay all charges for labor, electric current, supplies, repairs, and all other expenses of any kind and character whatsoever in and about the operation of the said dredger "Oakland," and also hold the said dredger "Oakland" and the party of the first part, harmless from any debts that accrue from any of the expenses aforesaid, or from any act or omission of the party

of the second part.

5. Said party of the second part shall have no authority to incur any obligations whatsoever on the credit of said dredger "Oakland," or on the credit of the party of the first part. In the event that any claim of lien, or other claim or demand shall be asserted by any one whatsoever, against the said dredger "Oakland," or the party of the first part, on account of any indebtedness or other liability incurred by the party of the second part or arising out of any act or omission of the party of the second [31] part, said party of the second part shall, and hereby agrees that it will, promptly pay and discharge the same, and will also pay to the party of the first part all costs, expenses and attorneys' fees that shall be incurred by the party of the first part on account thereof, and all damages that may be sustained by the party of the first part by reason thereof.

6. The performance by the party of the second part of the covenants, terms and conditions contained in the foregoing paragraphs numbered 3, 4, and 5 shall be secured by a bond in the sum of five thousand dollars (\$5,000), with a surety company as surety; and this agreement shall not take effect until said bond be given to and approved by the party of the first part.

7. In consideration of the execution of this agreement, all claim of the party of the second part to increased rental, or other charge, by reason of the detention of the "Richmond No. 1" beyond the term of the said charter, is hereby waived; and the term of said charter, as modified by this agreement, is hereby

extended, at the rental of eight hundred dollars a month, for the term of sixty days from this date, and for such further time as shall be fixed and determined as hereinafter provided; and the rental of said dredger "Richmond No. 1" to be earned, shall be applied as an offset to the rental of the dredger "Oakland" as far as it will go.

8. If at the expiration of the said term of sixty (60) days the party of the first part shall not have found any other work that it desires to do with said dredger "Oakland," this agreement may, at the option of the second party, be extended thereafter until the party of the second part shall have completed such amount of filling as may be desired by the party of [32] the second part on the lands aforesaid, not exceeding a total of 400,000 cubic yards of material including the filling that shall heretofore have been done by the use of said dredger "Oakland," under this agreement, or until the party of the first part shall have given the party of the second part fifteen (15) days' notice of termination of this agreement.

9. If at any time during the term of this agreement, or any extension thereof, the party of the first part shall secure work which it desires to do by the use of said dredger "Oakland," it may, at its option either require the party of the second part, after fifteen (15) days' notice in writing to operate said dredger "Oakland" twenty four (24) hours each day until 400,000 cubic yards of filling (including all filling previously done by the "Oakland" shall have been completed or to terminate this lease of the said

dredger "Oakland" by giving the party of the second part (15) days' notice of such termination, and returning the dredger "Richmond No. 1" to the party of the second part as in said charter provided, or paying the party of the second part at the rate of fifty (50) dollars a day for the said "Richmond No. 1" for all time it shall be retained by the party of the first part after the expiration of said fifteen (15) days' notice, and the return of the "Oakland" to the party of the first part.

10. It is hereby mutually agreed and understood that the rent of said dredger "Richmond No. 1" shall be eight hundred (800) dollars per month, and that the said first party shall have the right to lease and use said dredger "Richmond No. 1" at any and all periods when not in use or required by the party of the second part until Jan. 1st, 1911.

11. The party of the first part shall nominate the captain and chief engineer, who shall be employed and paid by the party of the second part in the operation of [33] the said dredger "Oakland" under this agreement; and said dredger shall not at any time be operated by the party of the second part except when in charge of a captain and chief engineer selected by the party of the first part.

12. The rental of the dredger "Oakland" shall be due and payable to the party of the first part on the 19th day of each month for the last preceding month; and the party of the second part agreed that on the 19th day of each month it will pay said rental to the party of the first part, after deducting the rental, if any, then due for the dredger "Richmond

No. 1." Time is of the essence of this provision.

13. It is agreed that the value of the said dredger "Oakland" is the sum of one hundred and fifty thousand dollars (\$150,000).

IN WITNESS WHEREOF the parties hereto have hereunto subscribed their names, and affixed their corporate seals, by their officers thereunto duly authorized, the day and year first above written.

(Signed) STANDARD AMERICAN DREDGING COMPANY.

[Seal] By (Signed) CLAUDE CUMMINS,
V. Prest.

By (Signed) W. A. H. CONNOR,
Secty.

[Seal] (Signed) RICHMOND DREDGING COMPANY.

By _____, Prest.

By (Signed) H. W. WERNSE,
Sec. [34]

EXHIBIT "B."

THIS AGREEMENT made and entered into this 10th day of February, 1909, by and between the RICHMOND DREDGING COMPANY, a corporation having its principal place of business in San Francisco, California, party of the first part, and STANDARD AMERICAN DREDGING COMPANY, a corporation having its principal place of business in San Francisco, California, party of the second part.

Witnesseth:

That whereas the party of the first part is the

owner of a suction dredge named "Richmond #1" and its equipment; and

Whereas, the party of the second part is desirous of renting said dredge and equipment and to operate same in Lake Merritt, the parties hereto have entered into the following agreement, to-wit:

For and in consideration of the sum of one thousand (1000) dollars per month, cash, payable on the 16th, day of each and every month for the preceding calendar month, to be paid by the party of the second part to the party of the first part, said party of the first part agrees to rent to the party of the second part the said dredge for a period not less than four (4) months and for as long thereafter as the party of the second part may desire said dredge for work in said Lake Merritt.

The party of the second part agrees to pay to the party of the first part on the 15th day of each and every month, the rent for the preceding calendar month, and further agrees to the following terms and conditions:

To accept the dredge with all equipment, where same is now lying in San Rafael Creek, and to pay all moving expenses into Lake Merritt; to use the utmost care in moving said dredge so as [35] to cause no strain to the hull, and agree to repair any and all damage and keep in repair, at its own sole expense; at all times to have responsible engineers in charge of the engines and on completion of said contract to return the dredge to and in the Canal at Richmond in as good condition and repair as the same now is, viz., in condition to immediately start

work, reasonable wear and tear and loss or injury by fire excepted, and to pay all expenses of any and all repairs to hull, equipment or machinery, except such as may be made necessary by fire, it being understood and agreed that the party of the second part assumes no risk for loss of or injury to said dredger or equipment by fire.

All pipe used in the dredging operations at Lake Merritt to become the property of the Richmond Dredging Company on completion of work and to be considered part of the equipment and to be moved and delivered with such equipment and delivered to and in said canal at the expense of the party of the second part. Repairs on the dredge or equipment to be made at the expense of the party of the second part, except as hereinbefore provided; to employ Mr. William Kruger as head leverman at a salary of one hundred and twenty-five (125.00) Dollars per month and board, and to employ Mr. George Betts as engineer at a salary of Eighty (80) Dollars per month and board during the term of operations under this lease, unless otherwise mutually agreed in writing; provided that if either said Krueger or said Betts should prove unsatisfactory to the party of the second part, he may be discharged and his place filled by some one satisfactory to both parties, and the party of the second part shall have the right temporarily to fill any such vacancy until some one satisfactory to both parties can be agreed upon. The party of the first part to have the right to board dredge at any time for the purpose of inspection.

Rent to commence as soon as dredge is delivered in

Lake Merritt, or in any event not later than February 28th, 1909, and the [36] party of the second part agrees to work a full crew day and night to move said dredge into Lake Merritt as speedily as possible, and rent to cease as soon as dredging is completed in said lake; dredge to be removed from Lake Merritt immediately upon completion of said dredging and delivered at Richmond within two weeks thereafter otherwise rent will be charged therefor.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 10th day of February, 1909.

(Signed) RICHMOND DREDGING COMPANY.

[Seal] By _____,

By (Signed) H. W. WERNSE, Secy.

(Signed) STANDARD AMERICAN DREDGING COMPANY.

[Seal] By (Signed) R. A. PERRY,
President.

By _____. [37]

EXHIBIT "C."

This agreement made and entered into this 18th day of October, 1909, by and between the RICHMOND DREDGING COMPANY, a corporation having its principal place of business in San Francisco, California, party of the first part, and Standard American Dredging Company, a corporation having its principal place of business in San Francisco, California, party of the second part,

WITNESSETH:

That whereas the party of the first part is the owner of a suction dredge named "Richmond #1" and its equipment; and

Whereas the party of the second part is desirous of renting said dredge and equipment and to operate same, the parties hereto have entered into the following agreement, to wit:

For and in consideration of the sum of Eight Hundred (\$800.00) Dollars per month, cash, payable on the 19th day of each and every month for the preceding month, to be paid by the party of the second part to the party of the first part, said party of the first part agrees to rent to the party of the second part the said dredge and equipment from October 19th, 1909, to January 20th, 1910.

The party of the second part agrees to pay to the party of the first part on the 19th day of each month the rent for the preceding month, and further agrees to the following terms and conditions.

To accept the dredge with all equipment, where same now is and to pay all moving expenses; to use the utmost care in moving said dredge so as to cause no strain to the hull, and agrees to repair any and all damage and keep in repair, at its own sole expense; at all times to have responsible engineers in charge of the engines and to return the dredge to and in the Canal at Richmond in as good condition and repair as same now is, viz., in condition to immediately start work, reasonable wear and tear and loss or injury by fire excepted, and to pay all expenses of any and all repairs to hull, equipment or ma-

chinery, except such as may be made necessary by fire, [38] it being understood and agreed that the party of the second part assumes no risk for loss or injury to said dredger or equipment by fire, but assumes all risk for loss or injury from any other cause.

All pipe used in the dredging operations at Lake Merritt is the property of the Richmond Dredging Company and will be delivered as part of the equipment, to and in said Canal at Richmond at the expense of the party of the second part. Repairs on the dredge or equipment to be made at the expense of the party of the second part, except as hereinbefore provided.

The party of the first part to have the right to board dredge at any time for the purpose of inspection.

Rent to commence on the 19th day of October, 1909, and to be paid promptly on the 19th of each month thereafter.

Said second party further agrees to deliver dredge, pipe and all equipment, to and in the Canal at Richmond by the 31st day of January, 1910, otherwise rent will be charged therefor at the rate of Fifty (\$50.00) Dollars per day.

The value of said dredge at this time is Thirty Thousand Dollars (\$30,000.00).

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this 18th day of October, 1909.

(Signed) RICHMOND DREDGING COMPANY.

By _____.

By (Signed) H. W. WERNSE, Secy.

(Signed) STANDARD AMERICAN DREDGING COMPANY.

By (Signed) R. A. PERRY, President.

By _____.

Memoranda.—I personally guarantee the above contract.

Oct. 25, 09.

(Signed) R. A. PERRY. [39]

EXHIBIT "D."

To the STANDARD AMERICAN DREDGING COMPANY,

San Francisco, Cal.

Richmond Dredging Company hereby again makes further and repeated demand for the immediate return to it of the dredger "Richmond No. 1."

Demand was made upon Standard American Dredging Company on the 15th, and on the 16th, of August, 1910, for the immediate return to Richmond Dredging Company of the dredger "Richmond No. 1," but the said dredger has not been returned.

As you have already been notified, Richmond Dredging Company has use for and now requires the dredger "Richmond No. 1," and said Richmond Dredging Company has heretofore terminated, and now hereby terminates the lease or agreement under

which you took and now hold possession of said dredger "Richmond No. 1," and again demands the immediate return of said dredger.

You will further take notice that Richmond Dredging Company will claim fifty (\$50.00) dollars per day for the use of said dredger "Richmond No. 1" for every day that it is entitled to claim that amount under the agreement by virtue of which you hold said dredger or otherwise.

It is suggested that a representative of Standard American Dredging Company meet a representative of Richmond Dredging Company without delay for the purpose of adjusting the accounts between said companies.

Dated at San Francisco this 1st day of September, 1910.

(Signed) RICHMOND DREDGING COMPANY.

By (Signed) H. C. CUTTING.

Due service of the within Second Amended Libel and Supplemental Libel and receipt of a copy of each of them is hereby admitted this ninth day of March, 1911.

J. S. SPILMAN and
IRA. S. LILLICK,

Proctors for Claimant and Respondents.

[Endorsed]: Filed Mar. 9, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [40]

Exceptions to Second Amended Libel.

[Style of Court, No. and Title of Cause.]

To the Hon. JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The exceptions of Standard American Dredging Company, a corporation, respondent, and California Reclamation Company, a corporation, Atlas Gas Engine Co., a corporation, and Standard American Dredging Company, a corporation, claimants above named, and each of them, to the second amended libel, and so-called supplemental libel, on file herein, avers as follows:

- 1: That the said second amended libel does not state facts sufficient to constitute a cause of action.
- 2: That said second amended libel does not state facts sufficient to constitute a cause of possession.
- 3: That said second amended libel does not state facts sufficient to constitute a cause of damages.
- 4: That said second amended libel sets out an alleged cause of action which, as appears affirmatively from the terms of the charter-party, marked Exhibit "A," attached to the said libel, was not in existence at the time of the filing of the original libel herein.
- 5: That the above-entitled court has no jurisdiction of the alleged cause of action attempted to be set out in said second amended libel, it appearing from the charter-parties and agreements marked Exhibit "A" and Exhibit "C," attached to said second amended libel, that under the terms thereof the claimant, Standard American Dredging Company

was entitled to retain possession of the dredger "Richmond No. 1" beyond the date of the filing of the original libel herein. [41]

6: That said second amended libel is uncertain in this, that it does not appear therein, nor can it be ascertained therefrom:

(a) How, or in what manner, the Standard American Dredging Company could terminate the said charter-party as to the dredger "Oakland."

(b) What effect, if any, the charter-party referred to as Exhibit "B" had upon the charter-party attached to said second amended libel and marked Exhibit "A," or upon the or any of the causes of action alleged or attempted to be alleged in said second amended libel.

(c) How, or in what manner, it was agreed and understood between the parties to said charter-party that the Standard American Dredging Company would have no right to the use of the dredger "Richmond No. 1" after the right of the Richmond Dredging Company to use the dredger "Oakland" had been terminated, or after the return of the dredger "Oakland" to the libelant.

Further excepting to said second amended libel and to the so-called first claim of damage under the so-called supplemental libel, said claimants aver as follows:

1: That the so-called first claim of damage under the so-called supplemental libel does not state facts sufficient to constitute a cause of action.

2: That the said so-called first claim of damage in said so-called supplemental libel is indefinite and

uncertain in that it does not appear therein, nor can it be discovered therefrom:

(a) Whether libelant is claiming under charter-party marked Exhibit "A," or charter-party marked Exhibit "B," or charter-party marked Exhibit "C."

[42]

(b) Whether libelant claims under a charter-party for an agreed price for the use of said dredger, or whether libelant claims for the reasonable value of the use of said dredger.

Further excepting to the so-called second claim of damage in said so-called supplemental libel, the claimants aver:

1: That the so-called second claim of damage in said so-called supplemental libel does not state facts sufficient to constitute a cause of action.

2: That said so-called second claim of damage in said so-called supplemental libel is indefinite and uncertain in that the damages claimed are too remote.

Further excepting to the third so-called claim of damage under the so-called supplemental libel, said claimants aver as follows:

1: That the third so-called claim of damage under the said so-called supplemental libel does not state facts sufficient to constitute a cause of action.

Further excepting to the so-called fourth claim of damage in said so-called supplemental libel, the claimants aver:

1: That the so-called fourth claim of damage in said so-called supplemental libel does not state facts sufficient to constitute a cause of action.

WHEREFORE, said claimants, and each of them,

pray that the said second amended libel and so-called supplemental libel be dismissed, and for their, and each of their costs herein.

Dated: San Francisco, Cal., March 28th, 1911.
[43]

J. S. SPILMAN,
IRA S. LILLICK,

Proctors for Claimants and Respondent Standard
American Dredging Company.

Due service and receipt of a copy of the within
Notice of Motion is hereby admitted this 28th day of
March, 1911.

J. L. TAUGHER,
Attorney for Libelant.

[Endorsed]: Filed Mar. 28, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [44]

**Notice of Motion to Strike Out Second Amended
Libel.**

[Style of Court, Number and Title of Cause.]

NOTICE OF MOTION TO STRIKE OUT.

To Richmond Dredging Company, a Corporation.
Libelant, and to J. L. Taugher, Its Proctor:

You, and each of you, will please take notice that
the claimants above named will, upon Saturday, the
8th day of April, 1911, at the hour of ten o'clock
A. M., or as soon thereafter as proctors can be heard,
at the courtroom of the above-entitled court, upon
the northeast corner of Mission and Seventh Streets,
in the United States Postoffice Building, in the City
and County of San Francisco, State of California,

move the above-entitled court for an order striking out all of the following portions of the second amended libel on file herein, viz.:

1. The words "unlawfully and wrongfully," on lines 11 and 12, and from line 18 to line 24, both inclusive, and the words "among other things," in line 32, all on page 2;
2. The words "and of the former charter-parties of said dredgers mentioned therein," in lines 22 and 23, on page 3, and the word "respectively" and "B" in line 24 on page 3;
3. Lines 25 to 31, both inclusive, on page 3;
4. The words "and then and thereupon became entitled to the immediate possession of its dredger 'Richmond No. 1,'" in lines 4 and 5, page 4;
5. All of paragraph V on page 4;
6. Lines 10 to 15, inclusive, on page 5.

The said motion, as to the foregoing points, will be made upon the ground that as to subdivisions 1, 2, 3, 4 and 5 hereof, the portions of the said amended libel mentioned therein are immaterial and erroneous conclusions from and in direct contradiction of the terms of the charter-parties and agreements attached to said second amended libel marked Exhibit "A" and Exhibit "C," and as to subdivision 6, that the said portion of said libel is redundant. [45]

And at the same time and place, the proctors for claimants will move the said Court for an order striking out all of the following portions of the so-called supplemental libel on file herein, viz.:

1. Lines 30 to 32, inclusive, on page 1 of the so-called first claim of damage under the said so-called

supplemental libel, and lines 1 to 20, inclusive, on page 2 of said so-called first claim of damage, on the ground that said portions of said so-called supplemental libel are irrelevant and immaterial.

2. Lines 21 to 32, inclusive, on page 2 of the so-called first claim of damage under the said so-called supplemental libel, and lines 1 to 5 on page 3 of said so-called supplemental libel, on the ground that said portions of said so-called supplemental libel are irrelevant and immaterial.

3. Lines 16 to 19, on page 3 of said so-called first claim of damage in said so-called supplemental libel, on the ground that said portions of said so-called first claim of damage are immaterial and irrelevant, as well as redundant.

4. Lines 20 to 33, inclusive, on page 3 of said so-called first claim of damage in said so-called supplemental libel, on the ground that said portions of said so-called first claim of damage are irrelevant and immaterial.

5. Lines 1 to 13, inclusive, on page 4 of said so-called first claim of damage in said so-called supplemental libel, on the ground that said portions of said so-called first claim of damage are immaterial and irrelevant.

6. Lines 26 to 32, inclusive, on page 4; lines 1 to 33 on page 5; lines 1 to 32 on page 6; lines 1 to 32 on page 7; and lines 1 to 26, inclusive, on page 8, of the so-called second claim of damage in said so-called supplemental libel, on the ground that said so-called second claim of damage is immaterial and irrelevant.

7. Lines 28 to 32, inclusive, on page 8; lines 1 to

32, inclusive, on page 9; and lines 1 to 5, inclusive, on page 10, [46] of the so-called third claim of damage in said so-called supplemental libel on the ground that said so-called third claim of damage is immaterial and irrelevant.

8. Lines 7 to 22, inclusive, on page 10, of the so-called fourth claim of damage in said so-called supplemental libel, on the ground that said so-called fourth claim of damage is immaterial and an erroneous conclusion of law.

9. Lines 30 to 32, inclusive, on page 10, and lines 1 to 6, inclusive, and the words "of 34400 dollars" in lines 9 and 10, on page 11 of the said so-called supplemental libel, on the ground that said portions of said so-called supplemental libel are irrelevant and immaterial.

10. Exhibit "B," being pages numbered 1 and 2 and succeeding page, which, if numbered consecutively, would be page 3, on the ground that said exhibit is immaterial and irrelevant.

Dated March 28, 1911.

IRA S. LILLICK and
J. S. SPILMAN,

Proctors for Claimants and Respondent Standard
American Dredging Co.

Due service and receipt of a copy of the within notice of motion is hereby admitted this 28th day of March, 1911.

J. L. TAUGHER,
Attorney for Libelant.

[Endorsed]: Filed Mar. 28, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [47]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 5th day of June, in the year of our Lord, one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 15,072.

RICHMOND DREDGER CO.

vs.

Dredger RICHMOND No. 1, etc.

Order Submitting Exceptions, etc.

The Exceptions to the amended and supplemental libel herein this day came on for hearing, Ira S. Lillick, Esqr., appearing for respondent and J. L. Taugher, Esqr., appearing for libelant, and after hearing proctors, by the Court ordered that said exceptions be, and the same are hereby submitted to the Court for decision upon the points and authorities cited. [48]

[Style of Court, Number and Title of Cause.]

**Memorandum Opinion as to Second Amended Libel,
etc.**

DE HAVEN, District Judge.

The exceptions to the second amended libel are overruled. The exceptions to the second and fourth claims of damage set forth in the supplemental libel are sustained, and all other exceptions to the supple-

mental libel are overruled.

The motion to strike out second amended libel and the supplemental libels is denied.

The respondent will be allowed ten days in which to answer the second amended libel and supplemental libels.

[Endorsed]: Filed Jun. 14, 1911. Jas. P. Brown,
Clerk. By Francis Krull, Deputy Clerk. [49]

[Style of Court, Number and Title of Cause.]

**Notice of Motion for Leave to File Supplemental
Answer and to Introduce Evidence in Support
Thereof.**

To the Libelant Above Named, and to J. L. Taucher,
Esq., Its Proctor:

You, and each of you, are hereby notified that on Friday, the 24th day of November, 1911, at ten o'clock A. M., or as soon thereafter as proctors can be heard, a motion will be made in the courtroom of the above-entitled court, on the third floor of the United States Postoffice Building, on the northeast corner of Seventh and Mission Streets, in the City and County of San Francisco, State of California, for an order allowing the said respondents to file their supplemental answer, a copy of which is hereto annexed, and to introduce evidence in support thereof. Upon the hearing of the said motion, all of the papers on file in the above-entitled cause, as well as the records of the above-entitled court, will be used, as well

as this notice and the supplemental answer hereto attached.

Dated, November 20th, 1911.

Yours etc.,

J. S. SPILMAN,

IRA S. LILLICK.

Proctors for Standard American Dredging Company
(a Corporation), Respondent. [50]

[Style of Court, Number and Title of Cause.]

Supplemental Answer.

Now comes Standard American Dredging Company, respondent and claimant in the above-entitled cause, and by leave of Court first had and obtained, makes and files this its supplemental answer to the second amended libel and supplemental libel in said cause, and avers;

I.

That the dredger "Richmond No. 1" was at all times subsequent to the 3d day of February, 1911, until the first day of August, 1911, at Richmond, in the State and Northern District of California, and in the canal at Richmond, in charge of a watchman employed and paid by said Standard American Dredging Company, subject to the acceptance of said dredger by the libelant herein.

II.

That on the first day of August, 1911, the said Standard American Dredging Company commenced an action in the Circuit Court of the United States, in and for the Northern District of California, for

the Ninth Circuit, in which action said Standard American Dredging Company was and is plaintiff, and said Richmond Dredging Company was and is the defendant, which said action was and is an action at law upon a contract for the direct payment of money.

III.

That in the said action a writ of attachment was duly issued out of said Circuit Court, directed to the United States Marshal for the Northern District of California, and in pursuance of said writ of attachment the said United States Marshal did, on or about the first day of August, 1911, attach and seize the said dredger "Richmond No. 1," and ever since said attachment and seizure the said dredger "Richmond No. 1" has been, and now is, in the custody and possession of said United States Marshal at Richmond, in the State and Northern District of California, and in the canal at [51] Richmond.

IV.

That said Standard American Dredging Company has since said 3d day of February, 1911, paid said keeper the sum of \$590.00, for his services for safely and securely keeping said dredger, her engines, boilers, machinery and equipment, and the said sum of \$590.00 is the reasonable value of the services of said keeper, and that said Richmond Dredging Company has not paid said Standard American Dredging Company any part thereof, and is indebted to said Standard American Dredging Company for the said amount paid said keeper, as aforesaid.

WHEREFORE, said respondent prays that the

amended libel and supplemental libel herein may be dismissed with costs to said respondent, and that said libelant take nothing by its said libel and supplemental libel; or, in case this Honorable Court shall hold that this action is within the admiralty jurisdiction, this respondent prays that judgment may be entered herein in favor of the said libelant and against this respondent for the sum of Eight Thousand and Ten Dollars (\$8,010), with costs to said respondent.

STANDARD AMERICAN DREDGING
COMPANY (a Corporation).

By W. L. PAULSON,
Director.

J. S. SPILMAN,
IRA S. LILLICK,

Proctors for Respondent Standard American Dredging Company (a Corporation). [52]

Northern District of California,—ss.

W. L. Paulsen, being duly sworn, says that he is the Director of Standard American Dredging Company, a corporation, the respondent above named, and is authorized to make this affidavit on its behalf; that he has read the foregoing answer and knows the contents thereof; that it is true as he verily believes.

W. L. PAULSON,
Director.

Subscribed and sworn to before me this 20th day of November, 1911.

[Seal] CEDA DE ZALDO,
Notary Public in and for the City and County of San
Francisco, State of California.

Due service and receipt of a copy of the within notice of motion, etc., is hereby admitted this 20th day of November, 1911.

J. L. TAUGHER,
Per R. C. P.,
Proctor for Libelant.

[Endorsed]: Filed Nov. 20, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [53]

[Style of Court, and Title of Cause.]

Answer to Second Amended Libel.

To the Honorable JOHN J. DE HAVEN, Judge of
the District Court of the United States for the
Northern District of California:

The answer of the Standard American Dredging Company (a corporation), Bailee of the dredger "Richmond No. 1," and respondent, to the Second Amended Libel and Supplemental Libel of Richmond Dredging Company, respectfully shows, as follows:

I.

Answering unto the first article in said Second Amended Libel, the said respondent admits the same.

II.

Answering unto the second article in said Libel, the said respondent admits that at the times alleged in the said Libel the Richmond Dredging Company was

the owner of the dredger "Richmond No. 1," her engines, boilers, machinery and equipment, but denies that at the time of the filing of the original libel herein, or at any time since said date, save and except subsequent to the 1st day of January, 1911, the said libelant was entitled to the possession of said dredger, her engines, boilers, machinery or equipment; and further denies that the engines that were upon said dredger at the time of the filing of the original libel herein are or ever were the property of said libelant, or that it has or ever had any right, title or interest therein, or any right to the possession thereof.

III.

Answering unto the third article in said libel, the said respondent denies that said dredger, "Richmond No. 1," is, or ever was, a vessel, but admits that said dredger is so constructed that she floats in water and has a superstructure [54] containing a galley and accommodations for men, as well as certain machinery. The said respondent admits that the said dredger is built to operate afloat and not otherwise, and that during all the times in said libel mentioned the said dredger was operated afloat; but said respondent denies that said dredger is, or ever was equipped to navigate upon the ocean or other navigable water, and avers that said dredger has no independent means of navigation; that she is a suction dredger, and has neither masts, spars, wheels nor rudder.

That at the time of the filing of the libel herein, and at the time of the seizure of said dredger by the

United States marshal under the process issued in the above-entitled cause, the said dredger was, and ever since on or about, to wit: July 30th 1910, has been, in use by the claimant, Standard American Dredging Company, in taking material from the bed of the Sacramento River, by the use of suction pipes, and therewith constructing a roadbed for the Sacramento Southern Railroad at Walnut Grove, Sacramento County, California, under a contract between the Southern Pacific Company, a corporation, and said Standard American Dredging Company.

IV.

Answering unto the fourth article in said libel, the said respondent denies that the possession of the said dredger was upon the date of the filing of original libel herein, or has been since the 15th day of August, 1910, or at any other time, unlawfully or wrongfully withheld from libelant by the said respondent, but admits that the said respondent upon the 26th day of February, 1910, was in possession of the said dredger and avers that said respondent held possession of said dredger upon said last mentioned date under the terms and provisions of that certain agreement made and entered into between libelant and said respondent, and dated October 18th, [55] 1909, a copy of which agreement is attached to the second amended libel on file herein and marked Exhibit "C"; that upon said 26th day of February, 1910, libelant and said respondent made, executed and delivered that certain agreement dated February 26th, 1910, a copy of which agreement is attached to said second amended libel and marked Exhibit "A," and that

respondent continued to hold the possession of said dredger under said last-mentioned agreement up to the 3d of February, 1911.

The said respondent denies that said respondent's possession of said dredger from the 26th day of February, 1910, to the 3d day of February, 1911, was, or is, without foundation in fact or in law, and denies that said agreement dated February 26th, 1910, expired, terminated or ended on the 15th day of August, and avers that said agreement did not expire, terminate or end until the 3d day of February, 1911. The said respondent further denies that the right of said respondent to the possession of said dredger ceased, terminated or ended upon said 15th day of August, 1910, or upon any other date previous to the 3d day of February, 1911.

The said respondent admits that in and by the terms of said agreement dated February 26th, 1910, the Standard American Dredging Company leased and rented unto the Richmond Dredging Company the electric dredger "Oakland" for the term of sixty days from the date thereof, but alleges that in and by the terms of said agreement the said dredger was to be used for the filling of certain lands at and near Richmond, California, at a minimum rental of \$800 per month, which said monthly rental was agreed to be paid and accepted for the use of said dredger "Oakland" for not more than one shift, not exceeding twelve hours each day; it being further agreed that if at any time during said term, said dredger should be [56] operated more than twelve hours in any day, said Richmond Dredging Company

should pay said Standard American Dredging Company an additional rental at the rate of \$800 a month for the extra time of operation; and that if at the expiration of the said term of sixty days the said Standard American *Dredging* should not have found any other work that it desired to do with said dredger "Oakland," the said agreement might, at the option of the said Richmond Dredging Company, be extended thereafter until the said Richmond Dredging Company should have completed such amount of filling as might be desired by it on the said lands, not exceeding a total of 400,000 cubic yards of material, including the filling that should have been done by the use of said dredger prior to said 26th day of February, 1910, or until the said Standard American Dredging Company should give the said Richmond Dredging Company fifteen days' notice of the termination of said agreement.

The said respondent alleges that in and by the terms of said agreement it was further agreed that, if at any time during the term of said agreement, or any extension thereof, the said Standard American Dredging Company should secure work which it desired to do by the use of said dredger "Oakland" it might, at its option, either require the said Richmond Dredging Company, after fifteen days' notice in writing, to operate said dredger "Oakland" twenty-four hours each day until 400,000 cubic yards of filling (including all filling previously done by the "Oakland") should be completed, or terminate the said lease of the said "Oakland" by giving the said Richmond Dredging Company fifteen days' notice

of such termination, and returning the dredger "Richmond No. 1" to said Richmond Dredging Company, or paying the said Richmond Dredging Company at the rate of \$50 per day for said dredger "Richmond No. 1" for all time that it should be retained by the said Standard American Dredging [57] Company after the expiration of said fifteen days' notice and the return of the dredger "Oakland" to the said Standard American Dredging Company.

The said respondent admits that the Richmond Dredging Company leased and rented unto the Standard American Dredging Company the dredger "Richmond No. 1" for sixty days from the 26th day of February, 1910, and for such further time as should be fixed and determined, as in said agreement further provided, but alleges that in and by the terms of said agreement it was further agreed that the rent of said dredger "Richmond No. 1" should be \$800 per month, and that said Standard American Dredging Company should have the use of said dredger until the 1st day of January, 1911, but that the said Standard American Dredging Company might terminate the lease of the dredger "Oakland" to said Richmond Dredging Company by serving upon said last mentioned company a fifteen days' notice of such termination, in which event if said Richmond Dredging Company required said dredger "Richmond No. 1," said Standard American Dredging Company agreed to pay said Richmond Dredging Company the sum of \$50 per day for the use of said dredger "Richmond No. 1" for all time that said

dredger "Richmond No. 1" should be retained by said Standard American Dredging Company after the expiration of said notice and the return of the dredger "Oakland" by the libelant.

The said respondent admits that, among other things, in the said agreement it was provided that if at the expiration of the said term of sixty days, the Standard American Dredging Company had not found other work that it desired to do with the dredger "Oakland," the said agreement might, at the option of the libelant, be extended thereafter until the libelant should have completed such amount of filling as it might desire upon the lands mentioned in said agreement, not exceeding a [58] total of 400,000 cubic yards of material, including the filling that should have theretofore been done by the use of said dredger "Oakland" under said agreement, or until the Standard American Dredging Company should give the libelant fifteen days' notice of termination of said agreement as to said dredger "Oakland."

Said respondent admits that it was further provided in the said agreement that if the Standard American Dredging Company secured work which it desired to do by use of said dredger "Oakland," it might, at its option, either require the libelant, after fifteen days' notice in writing, to operate said dredger "Oakland" twenty-four hours each day until 400,000 cubic yards of filling (including all filling previously done by the "Oakland") should be completed, or terminate the said lease of the said dredger "Oakland" by giving the libelant fifteen

days' notice of such termination, and either returning the dredger "Richmond No. 1" to the libelant, as in said agreement provided, or paying the libelant at the rate of \$50 per day for said "Richmond No. 1" for all time it should be retained by the Standard American Dredging Company after the expiration of said fifteen days' notice and the return of the "Oakland" by the libelant.

The said respondent denies that it was further agreed and understood by the parties to said agreement, and denies that said agreement was made upon the express condition, that the Standard American Dredging Company would have no right to the use of the dredger "Richmond No. 1" after the Standard American Dredging Company terminated the right of the libelant to use the dredger "Oakland" and after said dredger "Oakland" had been returned to said Standard American Dredging Company, as provided in said agreement; but alleges that under and by the terms of said agreement, and as one of the express conditions thereof, [59] the Standard American Dredging Company, after it terminated the right of the libelant to use the dredger "Oakland" and after said dredger "Oakland" had been returned to said Standard American Dredging Company, was given the right to retain the dredger "Richmond No. 1" by paying libelant at the rate of \$50 per day for said dredger "Richmond No. 1" for all time it should be retained by said Standard American Dredging Company, and that under the terms and conditions of said agreement, the said Standard American Dredging Company was entitled to the use of the said dredger "Richmond

No. 1" for a rental of \$50 per day for all time that the said dredger should be used by said Standard American Dredging Company after the expiration of the fifteen days' notice, hereinbefore referred to, and the return of the "Oakland" by said libelant.

Said respondent admits that on or about, to wit, the 12th day of August, 1910, it demanded a return of the dredger "Oakland," and that on or about, to wit, the 14th day of August, 1910, the libelant returned and delivered the said dredger "Oakland" to said Standard American Dredging Company, but said respondent denies that then and thereupon the libelant became entitled to the immediate or other possession of said dredger "Richmond No. 1," and alleges that said respondent was entitled, under the terms of said agreement, to retain possession of said dredger "Richmond No. 1" at a rental of \$50 per day for the use of said dredger "Richmond No. 1."

The said respondent admits that it refused to return the said dredger "Richmond No. 1" to the libelant at the times mentioned in said libel, and that the libelant on the 16th day of August, 1910, and upon the first day of September, 1910, demanded from the said respondent the return of said dredger "Richmond No. 1," and that the copy of said last mentioned demand attached to the second amended libel on file herein is [60] a true copy thereof, but denies that the refusal of said respondent to return said dredger "Richmond No. 1" to said libelant has caused any damage to said libelant.

V.

Said respondent denies that the said dredger

“Richmond No. 1,” and the engines, boilers, machinery and equipment belonging to said dredger and to libelant, is of the value of \$40,000 and upwards, and alleges that the value of the said dredger “Richmond No. 1,” and the engines, boilers, machinery and equipment belonging to said dredger and to libelant, is now, and was at all times mentioned in said libel, of a value of about, to wit, the sum of \$30,000, and not in excess of said sum of \$30,000.

VI.

The respondent denies upon its information and belief that the said libelant was or had been damaged at the time of the filing of the original libel herein, or at any other time, in the sum of \$1250.00, or any other sum, by the detention of said dredger “Richmond No. 1” by the Standard American Dredging Company, as alleged in said second amended libel, either by reason of the loss of the use of said dredger from the 15th day of August, 1910, up to the date of the filing of the original libel herein on September 2d, 1910, or for attorneys’ fees incurred by the libelant in endeavoring to recover possession of said dredger prior to filing the original libel herein, or otherwise.

VII.

The said respondent admits that prior to the commencement of this action the said libelant demanded of the said respondent the possession of the said dredger.

VIII.

The said respondent admits that the said dredger is now in the Northern District of California, but denies that all [61] and singular the allegations of

said libel, except as hereinbefore specifically admitted are true, and denies that the said cause of action attempted to be set out in said second amended libel is within the admiralty jurisdiction of this Honorable Court.

Further answering the said second amended libel, and as a further and separate defense herein, the said respondent alleges:

That the cause of action attempted to be alleged in the said libel is not an admiralty or maritime cause of action, and that the dredger "Richmond No. 1" therein referred to is not, nor was it at the time of the filing of the libel in this action, a vessel within the meaning of the Acts of Congress of the United States, and is not, nor was it at any of said times, subject to the admiralty or maritime jurisdiction of this Honorable Court, for the reason that the said dredger is a float, barge or hull equipped with machinery and pipes for lifting and placing dirt and mud by suction only, and has no means of any kind in her structure or equipment of navigating or moving from place to place unaided, and can only be moved as a tow by tugs or other craft with independent power. That at the times mentioned in the said libel, the said dredger was not engaged in deepening or widening any navigable waters within the United States, nor in improving navigation, but was engaged in private work in taking material from the bed of the Sacramento River and therewith constructing a roadbed for the Sacramento Southern Railroad at Walnut Grove, Sacramento County, California, under a contract between the Southern Pacific Company, a cor-

poration, and said Standard American Dredging Company. [62]

Further answering said libel, and as a separate defense thereto, the said respondent alleges:

That under the terms of the agreement entered into by and between the said respondent and the said libelant upon the 26th day of February, 1910, the said libelant leased the said dredger "Richmond No. 1" to said respondent at a rental of \$800 per month during the time and while the dredger "Oakland" was in possession of said libelant, and that under and by the terms of said agreement, the libelant and said respondent agreed that upon the return of said dredger "Oakland" to said respondent the rental to be paid by said respondent to said libelant for the use of said dredger "Richmond No. 1" should be at the rate of \$50 per day for all time that it should be retained by said Standard American Dredging Company after the return of said dredger "Oakland" to said Standard American Dredging Company.

Further answering the so-called first claim of damage under the supplemental libel herein, the said respondent, Standard American Dredging Company, a corporation, respectfully shows as follows:

I.

The said respondent, as to the allegations of said second amended libel attached to said supplemental libel, denies each and every, all and singular, the allegations of said second amended libel, except as the same are specifically admitted in the foregoing answer to said second amended libel.

II.

The said respondent admits that under process issued and directed to the United States Marshal for the Northern District of California, the said Marshal did on or about the 2d day of [63] September, 1910, seize and take possession of the said dredger "Richmond No. 1," and the engines, boilers, machinery and equipment that were, upon said last mentioned date, on the said dredger "Richmond No. 1." And admits that thereafter from said second day of September, 1910, the said marshal permitted the said respondent to use and operate the said dredger up to the 14th day of September, 1910, and that the said respondent deposited with the said marshal to abide the further order and decree of this Court, the sum of \$600.

III.

Said respondent admits that thereafter, and on or about the 14th day of September, 1910, the said dredger was, by order of this Honorable Court, released by the United States Marshal to the Standard American Dredging Company on its filing in the said Honorable Court an admiralty stipulation in the sum of \$40,000. That the said Standard American Dredging Company is named in said admiralty stipulation as the principal, and that the Pacific Coast Casualty Company, a corporation, is named in said admiralty stipulation as surety. That the said admiralty stipulation, so given as aforesaid, was made, executed and delivered in compliance with the said order of this Honorable Court for the purpose of and as an admiralty stipulation to abide by and perform

such decree as should be finally entered in the above-entitled action.

IV.

The said respondent admits that upon the filing of said admiralty stipulation, the said dredger was by said marshal released to said respondent, and that ever since said date said respondent has had possession of said dredger "Richmond No. 1," but denies that at all times since said 14th day of September, 1910, the said respondent has detained and now detains the said dredger from or against the will of said libelant, but alleges [64] that said respondent on or about the 3d day of February, 1911, tendered the said dredger "Richmond No. 1," and the possession of said dredger, to the said libelant in the canal at Point Richmond, California, in as good order and condition as it was when received by said respondent from said libelant, reasonable wear and tear thereof excepted, according to the terms and provisions of the agreement entered into between said libelant and said respondent upon the 26th day of February, 1910.

The said respondent admits that upon the 15th day of August, 1910, and at all times since said date, the said libelant was the true and only owner of the said dredger "Richmond No. 1," as well as the engines, boilers, machinery and equipment upon said dredger and belonging to it upon the 26th day of February, 1910, but denies that said libelant was, or ever has been, the owner of the engines which were upon said dredger on said 15th day of August, 1910.

The said respondent denies that the said libelant was entitled to the possession of said dredger, or her

engines, boilers, machinery or equipment upon said 15th day of August, 1910, or upon any other date subsequent to the 26th day of February, 1910, and up to the 3d day of February, 1911.

V.

That said respondent denies that the said libelant has been damaged by the or any detention of the said dredger "Richmond No. 1" by the said respondent, either as set forth in the said supplemental libel, or otherwise, in the sum of \$9,400, or in any other sum. But said respondent admits that under and by the terms of the agreement hereinbefore referred to, entered into by and between the said libelant and the said respondent herein on the 26th day of February, 1910, that said respondent is indebted to said libelant for the [65] rental of said dredger "Richmond No. 1" at the rate of \$50 per day from the 15th day of August, 1910, up to the 3d day of February, 1911; but denies that said respondent is indebted to said libelant, or owes said libelant for the use of said dredger after said 3d day of February, 1911.

Answering the so-called further and third claim of damage in the supplemental libel herein, the said respondent, Standard American Dredging Company, a corporation, respectfully shows as follows:

I.

The said respondent admits that when said dredger "Richmond No. 1" was released by the United States Marshal for the Northern District of California on the order of this Honorable Court, made, entered and filed in the above-entitled action, the said dredger "Richmond No. 1" had on board two certain gas en-

gines, one of which was a four cylinder 150 H. P. marine gas engine, and the other of which was a certain four cylinder Atlas gas engine of a 12-inch bore and 12-inch stroke, with complete equipment; but alleges that upon the 26th day of February, 1910, when said dredger "Richmond No. 1" was delivered to said respondent, the said dredger had on board, as part of its machinery a certain gas engine which had not sufficient power to perform the work which said respondent desired to do by the use of said dredger, and that said respondent removed said gas engine, then on board said dredger, and replaced the same by the two gas engines hereinbefore referred to.

That the said respondent in so removing said gas engine which was upon said dredger when the said dredger was delivered to said respondent, did not replace the same with the [66] two gas engines above referred to with the intent or for the purpose of repairing the said dredger, but changed the said engines for the sole purpose of obtaining additional power to perform the work the said respondent desired to do with the said dredger. That the gas engine removed from said dredger by said respondent was removed without detriment or loss to the said dredger, and that the said gas engine could have been appropriated to other use without loss, and that the said gas engine could have been followed, identified and recovered and again placed on board said dredger at any time; that one of the two gas engines which the said respondent placed upon said dredger after the removal of the gas engine which originally

was upon said dredger, was, and still is, owned by, and the property of, the Atlas Gas Engine Company, a corporation, and the other gas engine which the said respondent placed upon the said dredger after the removal of the gas engine which originally was upon said dredger, was, and still is, owned by, and the property of, the California Reclamation Company, a corporation, and that the said respondent leased the said two last mentioned gas engines from the said corporations for the purpose of use upon said dredger during the time mentioned in said agreement entered into between said libelant and said respondent upon the 26th day of February, 1910, and that said respondent placed the said two gas engines upon the said dredger only for temporary use.

That neither of the said two last mentioned engines formed an integral part of the dredger when the said dredger was released by this Honorable Court into the possession of said respondent, and said respondent alleges that it has not at any of the times mentioned in said libel or in said supplemental libel ever or at all admitted the title or the ownership of [67] said gas engines to be in the libelant. The said respondent admits that on or about, to wit, the first day of February, 1911, it removed the two gas engines, which it had placed temporarily upon the dredger "Richmond No. 1," from the said dredger and returned them to their respective owners, that thereafter the said respondent replaced and properly installed upon said dredger the gas engine which was upon said dredger when its possession was delivered to said respondent under the

terms of the agreement entered into between said libelant and said respondent upon the 26th day of February, 1910.

The said respondent admits that it removed from the said dredger the two gas engines above referred to, and alleges that it so removed the said gas engines without questioning its right so to do, and without believing it necessary to notify this Honorable Court or the United States Marshal of this District of its said action; but that in so removing said gas engines it acted without any intent to in any way mislead or deceive this Honorable Court or the United States Marshal of this District, and denies that the said engines, or either of them, were wilfully or wantonly or contumaciously removed by said respondent with wilful or wanton or utter or other disregard of the libelant's rights in the premises, and denies that the action of the said respondent was taken with wilful or wanton or contumacious or contemptuous or other disregard of this Court or its authority in the premises; and further denies that its said action in so removing said gas engines, or either of them, has damaged the libelant in the sum of \$10,000, or any other sum.

Further answering the said second amended libel and said supplemental libel, the said respondent, Standard American [68] Dredging Company, a corporation, respectfully shows:

I.

That said respondent on or about the 3d day of February, 1911, tendered the said dredger "Richmond No. 1" her engines, boilers, machinery and

equipment, and the possession thereof, to the said libelant in the canal at Point Richmond, California, in as good order and condition as said dredger, her engines, boilers, machinery and equipment were when received by said respondent from said libelant, reasonable wear and tear thereof excepted, according to the terms and provisions of the agreement entered into between said libelant and said respondent upon the 26th day of February, 1910.

II.

That said libelant, upon said 3d day of February, 1911, refused, and still refuses, to accept the said tender and delivery of said dredger "Richmond No. 1," her engines, boilers, machinery and equipment, and that said respondent thereupon hired a keeper to safely and securely keep the said dredger, her engines, boilers, machinery and equipment, for the compensation for such keeping of the sum of One Hundred Dollars (\$100) per month. That said respondent has since said 3d day of February, 1911, paid said keeper said sum of \$100 per month on the 3d day of each and every month since said 3d day of February, 1911. That said sum of \$100 per month is the reasonable value of the services of said keeper, and that said libelant has not paid respondent any part thereof and is indebted to said respondent for the amount paid said keeper, as aforesaid, and will continue to become indebted to said respondent at the rate of \$100 per month during such time as said libelant continues to refuse to [69] accept the return of said dredger "Richmond No. 1," her engines, boilers, machinery and equipment.

WHEREFORE, said respondent prays that the amended libel herein may be dismissed with costs to respondent, and that said libelant take nothing by its said libel, or, in case this Honorable Court shall hold that this action is within the Admiralty jurisdiction, this respondent prays that judgment may be entered herein in favor of the libelant and against this respondent for the sum of Eight Thousand Six Hundred Dollars (\$8600), less such sums as shall have been paid since the 3d day of February, 1911, to the said keeper, as aforesaid, to wit, \$100 per month, without costs to said respondent.

STANDARD AMERICAN DREDGING
COMPANY (a Corporation).

By R. A. PERRY,
President.

J. S. SPILMAN,
IRA S. LILLICK,

Proctors for Respondent, Standard American
Dredging Company, a Corporation.

Northern District of California,—ss.

R. A. Perry, being duly sworn, says: That he is the President of the Standard American Dredging Company, a corporation, the respondent above named, and is authorized to make this affidavit on its behalf; that he has read the foregoing answer and knows the contents thereof; that it is true as he verily believes.

R. A. PERRY.

Subscribed and sworn to before me this 31st day of July, 1911. [70]

[Seal] N. E. W. SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 1, 1911. Jas. P. Brown, Clerk. By M. T. Scott, Deputy Clerk. [71]

[Style of Court, and Title of Cause.]

Answer—Atlas Gas Engine Company.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The Answer of the Atlas Gas Engine Co., a corporation, owner of that certain 12-inch diameter cylinder, 12-inch stroke, 4 cylinder, stationary gas engine, with full equipment, on board the dredger "Richmond No. 1" upon the 2d day of September, 1910, answering the second amended libel and supplemental libel of Richmond Dredging Company, a corporation, against the Standard American Dredging Company, a corporation, and dredger "Richmond No. 1," her engines, boilers, machinery and equipment, in an alleged cause of possession and for damages, alleges as follows:

I.

Answering unto the first, second, third, fourth, fifth, sixth, seventh, and eighth articles in said libel, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither

admit nor deny the same, wherefore it calls for proof thereof.

II.

Answering unto the first, second, third, fourth, fifth, sixth and seventh articles in the so-called first claim of damage in the supplemental libel on file herein, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither admit nor deny the same, wherefore it calls for proof thereof.

III.

Answering unto the so-called third claim of damage in the supplemental libel on file herein, the said respondent alleges that it is ignorant as to the matters therein alleged so that it can neither admit nor deny the same, wherefore it [72] calls for proof thereof.

Further answering the said second amended libel and the so-called first and third claims of damage under the supplemental libel on file herein, the said respondent, Atlas Gas Engine Co., alleges that the said respondent is and at all of the times mentioned in said libel and said supplemental libel was the owner of that certain 4 cylinder Atlas Gas Engine with 12-inch cylinders and 12-inch stroke and the full equipment of said gas engine, all of which, upon the 2d day of September, 1910, were upon the dredger "Richmond No. 1," when said dredger was attached by the United States marshal for the Northern District of California under process issued in the above-entitled cause; and that said libelant is not, and was not at any of the times mentioned in said

second amended libel, or said supplemental libel, the true or *bona fide* owner of the said property, nor has it, nor had it, at any of the times aforesaid, any interest whatever therein.

That the said gas engine and the said equipment of the said gas engine was by this respondent leased to one R. A. Perry upon the 20th day of May, 1910, and that the title to said gas engine and the said equipment thereof was, at all of the times mentioned in the said second amended libel and said supplemental libel, and now is in said respondent.

WHEREFORE, said respondent prays that this Honorable Court will be pleased to decree that said respondent is the owner of said gas engine with its equipment, and that the same be delivered to it with its costs, and that respondent have such other and further relief as in law and justice it may be entitled to receive.

ATLAS GAS ENGINE CO. [73]

By A. WAREN SKJOLD.

J. S. SPILMAN,

IRA S. LILLICK,

Proctors for Atlas Gas Engine Co.

Northern District of California,—ss.

A. Warenskjold, being duly sworn, says: That he is the President of the corporation claimant and respondent above named, and is authorized to make this affidavit on its behalf; that he has read the foregoing answer and knows the contents; that it is true as he verily believes.

A. WAREN SKJOLD.

Subscribed and sworn to before me this 29th day of July, 1911.

[Seal]

M. V. COLLINS,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 1, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [74]

[Style of Court, and Title of Cause.]

Answer—California Reclamation Company.

To the Honorable JOHN J. DE HAVEN, Judge of the District Court of the United States, for the Northern District of California:

The Answer of California Reclamation Co., a corporation, owner of that certain four cylinder 150 horse-power Atlas marine engine, with full equipment, on board the dredger "Richmond No. 1," upon the 2d day of September, 1910, answering the second amended libel and supplemental libel of Richmond Dredging Company, a corporation, against the Standard American Dredging Company, a corporation, and the dredger, "Richmond No. 1," her engines, boilers, machinery and equipment in an alleged cause of possession and for damages alleges as follows:

I.

Answering unto the first, second, third, fourth, fifth, sixth, seventh and eighth articles in said libel, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither

admit nor deny the same, wherefore it calls for proof thereof.

II.

Answering unto the first, second, third, fourth, fifth, sixth and seventh articles in the so-called first claim of damages in the supplemental libel on file herein, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither admit nor deny the same, wherefore it calls for proof thereof.

III.

Answering unto the so-called third claim of damages in the supplemental libel on file herein, the said respondent alleges that it is ignorant as to the matters therein alleged, so that it can neither admit nor deny the same, wherefore it [75] calls for proof thereof.

Further answering the said second amended libel and the so-called first and third claims of damage under the supplemental libel on file herein, the said respondent, California Reclamation Co., alleges that the said respondent is and at all times mentioned in said second amended libel and said supplemental libel was the owner of that certain Atlas marine engine of 150 horse-power with four cylinders of twelve-inch diameter and of twelve-inch stroke, equipped with bronze propeller and other full equipment, which, upon the 2d day of September, 1910, were upon the dredger, "Richmond No. 1," when said dredger was attached by the United States marshal for the Northern District of California under process issued in the above-entitled cause, and

that said libelant is not and was not at any of the times mentioned in said second amended libel, or said supplemental libel, the true or *bona fide* owner of the said property, nor has it nor had it at any of the times aforesaid any interest whatever therein.

That the said gas engine and the said equipment of the said gas engine was by this respondent leased to said Standard American Dredging Company, a corporation, upon the 15th day of August, 1910, and that the title to said gas engine and to said equipment thereto was at all the times mentioned in the said second amended libel and said supplemental libel and now is in said respondent.

WHEREFORE, said respondent prays that this Honorable Court will be pleased to decree that said respondent is the owner of said gas engine, with its equipment, and that the same be delivered to it with its costs, and that respondent have such other and further relief as in law and justice it may be entitled to receive.

CALIFORNIA RECLAMATION CO. [76]

By W. L. PAULSON,
Director and Asst. Secy.

J. S. SPILMAN,
IRA S. LILLICK,

Proctors for California Reclamation Co.

Northern District of California,—ss.

W. L. Paulson, being duly sworn, says: That he is the assistant secretary of the corporation claimant and respondent above named, and is authorized to make this affidavit on its behalf; that he has read the

foregoing answer and knows its contents; that it is true as he verily believes.

W. L. PAULSON.

Subscribed and sworn to before me this 31st day of July, 1911.

[Seal] M. V. COLLINS,
Notary Public in and for the City and County of San
Francisco, State of California.

[Endorsed]: Filed Aug. 1, 1911. Jas. P. Brown,
Clerk. By M. T. Scott, Deputy Clerk. [77]

[Style of Court, No. and Title of Cause.]

**Supplemental Answer—Standard American
Dredging Company.**

SUPPLEMENTAL ANSWER.

Now comes Standard American Dredging Company, respondent and claimant in the above-entitled cause, and by leave of Court first had and obtained, makes and files this its supplemental answer to the second amended libel and supplemental libel in said cause, and avers:

I.

That the dredger "Richmond No. 1" was at all times subsequent to the 3d day of February, 1911, until the first day of August, 1911, at Richmond in the State and Northern District of California, and in the canal at Richmond in charge of a watchman employed and paid by said Standard American Dredging Company, subject to the acceptance of said dredger by the libelant herein.

II.

That on the first day of August, 1911, the said Standard American Dredging Company commenced an action in the Circuit Court of the United States, in and for the Northern District of California, for the Ninth Circuit, in which action said Standard American Dredging Company was and is plaintiff, and said Richmond Dredging Company was and is the defendant, which said action was and is an action at law upon a contract for the direct payment of money.

III.

That in the said action a writ of attachment was duly issued out of said Circuit Court, directed to the United States marshal for the Northern District of California, and in pursuance of said writ of attachment the said United States marshal did, on or about the first day of August, 1911, attach and seize the said dredger "Richmond No. 1," and ever since said attachment and seizure the said dredger "Richmond [78] No. 1" has been, and now is, in the custody and possession of said United States marshal at Richmond, in the State and Northern District of California, and in the canal at Richmond.

IV.

That said Standard American Dredging Company has since said 3d day of February, 1911, paid said keeper the sum of \$590.00 for his services for safely and securely keeping said dredger, her engines, boilers, machinery and equipment, and that said sum of \$590.00 is the reasonable value of the services of said keeper, and that said Richmond Dredging Company

has not paid said Standard American Dredging Company any part thereof, and is indebted to said Standard American Dredging Company for the said amount paid said keeper, as aforesaid.

WHEREFORE, said respondent prays that the amended libel and supplemental libel herein may be dismissed with costs to said respondent, and that said libelant take nothing by its said libel and supplemental libel; or, in case this Honorable Court shall hold that this action is within the admiralty jurisdiction, this respondent prays that judgment may be entered herein in favor of the said libelant and against this respondent for the sum of Eight Thousand and Ten Dollars (\$8,010), with costs to said respondent.

STANDARD AMERICAN DREDGING COMPANY (a Corporation).

By W. L. PAULSON,
Director.

J. S. SPILMAN,
IRA S. LILLICK,

Proctors for Respondent [79] Standard American Dredging Company (a Corporation).

Northern District of California,—ss.

W. L. Paulson, being duly sworn, says that he is a director of Standard American Dredging Company, a corporation, the respondent above named, and is authorized to make this affidavit on its behalf; that he has read the foregoing answer and knows the

contents thereof; that it is true as he verily believes.

W. L. PAULSON,

Director.

Subscribed and sworn to before me this 20th day of November, 1911.

[Seal]

CEDA DE ZALDO,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Nov. 24th, 1911. Jas. P. Brown, Clerk. By Francis Krull, Deputy Clerk.

[80]

[Order Granting Motion to File Supplemental Answer, etc.]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 24th day of November, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 15,072.

RICHMOND DREDGING COMPANY, a Corp.,
vs.

Dredger RICHMOND NO. #1 et al.

HEARING ON AMENDED ANSWER.

The motion for leave to file supplemental answer herein this day came on for hearing: Ira S. Lillick, Esqr., appearing for, and J. L. Taugher, Esqr., op-

posing said motion, and after hearing counsel, by the Court ordered that said motion be, and the same is hereby granted. The issues raised by said answer then came on for hearing. Mr. Lillick, attorney for respondents called W. L. Paulson and C. T. Elliott, who were each duly sworn and examined as witnesses on behalf of respondents. By the Court ordered that the cause be and the same is hereby continued until December 4th, 1911, at 2 o'clock P. M., for submission to the Court for decision. [81]

[Order Referring Cause to U. S. Commissioner to Take and Report Testimony, etc.]

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Thursday, the 28th day of September, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 15,072.

RICHMOND DREDGING COMPANY

vs.

Dredger RICHMOND #1, and STANDARD AMERICAN DREDGING CO.

J. L. Taucher, Esqr., proctor for libelant, and Ira S. Lillick, Esqr., proctor for respondent, this day came into court, and by consent of said proctors, by the Court ordered that this cause be, and the same

is hereby referred to Jas. P. Brown, U. S. Commissioner of this court, to take and report all the testimony offered by the respective parties and report the same to this Court within thirty days. Further ordered that this cause be, and the same is hereby, set for November 15, 1911, for hearing before the Court.

[82]

Order Submitting Cause.

At a stated term of the District Court of the United States of America for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Monday, the 4th day of December, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable JOHN J. DE HAVEN, Judge.

No. 15,072.

RICHMOND DREDGING COMPANY

vs.

STANDARD AMERICAN DREDGING CO. et al.

This cause this day came on for hearing, J. L. Taugher, Esqr., appearing for libelant, and Ira S. Lillick, Esqr., for defendant, and after hearing counsel, by the Court ordered that said cause be, and the same is hereby, submitted to the Court for decision upon the briefs this day filed by the respective parties. [83]

[**Testimony.**]

Wednesday, October 11th, 1911.

[**Testimony of Matthew William Musladin, for Libelant.**]

MATTHEW WILLIAM MUSLADIN, called for the libelant, sworn.

Mr. TAUGHER.—Q. What is your occupation, Mr. Musladin?

A. Foreman of the Doak Gas Engine Company's shop.

Q. Where?

A. Located in Oakland, 4th and Madison Streets.

Q. How long have you worked on and about gas engines, Mr. Musladin? A. Just about six years.

Q. What did that work cover?

A. It covered the building and repairing and testing and operating and installing of gas engines.

Q. Prior to your taking up the gas engine work what was your occupation, Mr. Musladin?

A. Machinist.

Q. How long experience did you have as machinist? A. About five years.

Q. Did you ever make an examination of the two Samson gas engines which had been removed from the dredger "Richmond No. 1," and which engines at the time of the examination were in the shop or warehouse of the Point Richmond Land and Canal Company at Richmond, California? A. I did.

Q. When did you make that examination?

A. About the 10th or 11th of October, 1910.

Q. Who was with you at the time you made such

(Testimony of Matthew William Musladin.)

examination of those engines?

A. There was Mr. Goodin and Mr. Cutting, and one of his men; I don't know his name.

Q. How long were you making that examination of those engines, Mr. Musladin? A. A whole day.

Q. How complete and thorough was that examination? A. It was a very thorough examination.

Q. Now, what was the condition of the crank shafts of those [84] engines? All of my questions now will go as to the time that you made that examination on October 10th or 11th, 1910. What was the condition of those crank shafts at that time?

A. The crank shafts were cut and scored on the bearings, and they had to be trued up to put them in shape.

Q. What was the condition of the fly-wheels?

A. Two of them were in good condition, and two had been cracked, and the hubs patched by shrinking bands on the hub.

Q. What kind of bands?

A. Iron or steel bands.

Q. Could those have been removed easily?

A. We made an attempt to remove them and found we could not do it with the tools we had there; it would have been quite a difficult job to get them off.

Q. Would it have been necessary to remove those wheels to repair the engines? A. Yes, sir.

Q. What was the condition of the studs and bolts on those engines?

A. Most of the studs were in a very poor condition; they were rusted loose in the walls of the castings,

(Testimony of Matthew William Musladin.)

and they were practically useless.

Q. What was the condition of the valve gear of the engines?

A. The valve had been exposed until there was nothing left of it; it would have to be entirely replaced.

Q. What was the condition of the cylinders?

A. Well, the cylinders—

Q. I mean the cylinder heads and various parts connected with the cylinders.

A. The cylinders would have had to be rebored to make a good job; they could have been run the way they were, but would not give satisfaction; and the cylinder head castings were rusted away in a good many places. [85]

Q. What was the effect of that, Mr. Musladin?

A. It made it impossible to prevent water leaking into the cylinder.

Q. What was the condition of the various brasses?

A. They were all quite loose; they would need re-fitting.

Q. In what condition was the piping in the engines?

A. The piping was all laid in a pile on the floor there and had been very much abused. I do not think any of it was of any further use.

Q. The valve chamber castings, exhaust valves around the engine?

A. They were all badly worn and water had been leaking across the faces and eaten the faces of the castings away.

Q. What part of the engines, or what parts of the

(Testimony of Matthew William Musladin.)

engines were good and not in need of repair, Mr. Musladin?

A. The best part of the engine was the base; very little repair would have put that in shape; that is a matter of some \$50 for rebabbitting. As I said before, the cylinders were not in very bad shape, and they were not in good shape and there were two fly-wheels that were in good condition.

Q. The balance of the engines were in need of repairs? A. Yes, sir.

Q. What would it have cost to put those engines in working order and repair?

A. In my opinion it would have been a matter of something like \$2,500.

Q. \$2,500? A. Yes, sir.

Q. After those repairs amounting to approximately \$2,500 had been put upon those engines, what would have been the value of those engines repaired?

A. I do not believe it would have exceeded \$2,000.

[86]

Q. In other words, the necessary repairs would have cost about \$2,500, and after that \$2,500 had been expended upon them the engines would be worth only about \$2,000? A. Yes, sir.

Q. That is your opinion of the result?

A. That is my opinion; yes.

Q. And the effect of these repairs and the value of the engines after being repaired? A. Yes, sir.

Q. What was the value of those engines at the time you made this examination?

A. Well, probably, the best way to get at it would

(Testimony of Matthew William Musladin.)
be to take the weight and allow 15 or 16 cents a pound
for it.

Q. They were only good for what they would bring
as old iron? A. That is my idea of it.

Q. They had no value, then, those engines, at all?
A. No, sir.

Q. What proportion of their original horse-power
would those engines have developed at the time you
examined them?

A. You could not say as to that because they could
not have been run.

Q. They could not have been run?

A. Not at that time.

Q. Could you say from your examination of those
engines anything as to the care that they had received
prior to the time that you examined them?

A. It appeared to me that they had not received
very much care, that they had been probably over-
loaded, and then abandoned without any care at all.

Q. Could you tell from the condition of those en-
gines at the time whether or not they had been sup-
plied with oil at the time they were worked in suffi-
cient quantities, or otherwise?

A. From the fact that the crank shaft journals
were cut or scored, it would show that at some time
they had not had oil. [87]

Q. What is the effect of overloading a gas engine,
Mr. Musladin?

A. Well, the principal effect would be to put more
strain in the engine than it was designed to carry.

(Testimony of Matthew William Musladin.)

Cross-examination.

Mr. LILLICK.—Q. How old are you, Mr. Musladin? A. 26.

Q. How long have you been a foreman at the Doak Gas Engine Company's place?

A. About six months.

Q. What were you doing before you were a foreman?

A. Acting as a machinist and outside man for the Doak Gas Engine Company.

Q. Does the Doak Gas Engine Company build engines? A. Yes, sir.

Q. And repairs them also? A. Yes, sir.

Q. Do you know whether or not the Doak Gas Engine Company has done the work for Mr. Cutting or the Richmond Dredging Company?

A. They have done none that I know of.

Q. How long have you known Mr. Cutting?

A. The first time I met him was on the day of that examination.

Q. Were you introduced to him by a friend of yours?

A. I was introduced to him by a salesman that worked for us at the time, Mr. Goodin.

Q. The Mr. Goodin who was present at the examination? A. Part of the time.

Q. How long have you known Mr. Goodin?

A. During the time he worked for the Doak Gas Engine Company, a period of several months, I do not know exactly.

Q. Do you know whether Mr. Goodin had ever

(Testimony of Matthew William Musladin.)

done any business for Mr. Cutting?

A. No, I do not.

Q. Had you worked for the five and a half years before you became a foreman for the Doak Gas Engine Company entirely? A. Yes, sir. [88]

Q. And before that time—

A. No; I had some short experience on gas engines in another shop. I had been with the Doak Gas Engine Company probably four years at the time I was appointed foreman.

Q. In other words, you have only been working for them four years and a half, really?

A. About that; I could not say exactly.

Q. Where were you working before you went to work for them?

A. I had worked in the Alliance Engine Company in Oakland. The Moore & Scott Iron Works, Rissdon Iron Works, and one or two others.

Q. Have you during that time ever had any work upon a Samson gas engine? A. No, sir.

Q. The Samson gas engine is built differently, is it not, from the ordinary gas engine?

A. Well, in minor details, it is. It is built in several different types, the same as any gas engine firm builds.

Q. Are not the cylinders upon the Samson engines of a different construction from those on the Atlas gas engines?

Q. They are different shaped, according to the taste of the designer.

Q. Are not they different in construction, with

(Testimony of Matthew William Musladin.)

reference to their bearings and the general set up of the engine? A. Yes, sir.

Q. Do you know how old those engines were?

A. I do not.

Q. Could you tell from your examination of them whether the cuts and the scorings that appeared on the crank-sharts were recent?

A. I believe they were recent. [89]

Q. Upon what do you base your opinion?

A. Well, if they had been operated any length of time after they were cut and scored, it would have ruined the crank-shaft and the bearings.

Q. Would that have been the case if they had been oiled properly after the scorings and cuts upon them had been made originally? A. I think it would.

Q. Does not oil stop a shaft from being cut?

A. No, it is impossible for oil to stop a shaft being cut after it has once been cut; a bearing will continue to get worse under conditions.

Q. If the engine was properly oiled, as I understand you, the shaft does not show any cutting or scoring? A. No, sir.

Q. Would not the oil have the same effect afterwards? A. No, sir.

Q. Why not?

A. Well, the cutting or scoring destroys the surfaces on both the bearing and the crank-shaft, and they would not run properly unless those surfaces were repaired again.

Q. By running properly, what do you mean?

(Testimony of Matthew William Musladin.)

A. Run without undue friction or without generating heat.

Q. Does not oil, if there is a sufficient quantity of oil placed upon them, stop the generation of heat as well as friction?

A. Under fair conditions it would; if the journals were smooth the oil would stop heat.

Q. Could you tell from your examination of the engines how long previous to your examination the rust had appeared upon the portions of it that you testified to as having been rusted?

Mr. TAUGHER.—I do not think he testified to that.

A. I could not tell exactly. It had time to rust them quite deeply.

Mr. LILLICK.—Q. You referred to two of the fly-wheels as [90] having been cracked. Could you tell how long ago those cracks had been made?

A. No; there is no means of telling.

Q. I understood you that there were bands covering over those cracks, were there?

A. Well, not exactly covering the cracks; the bands had been shrunk over the hubs of the wheels to hold them together.

Q. And where did the crack appear?

A. In the hub of the wheel.

Q. So that you could see it looking at it from the end? A. Or lengthwise in the hub.

Q. That is, standing off from the end of the hub you could see the crack in the hub, do you mean?

A. I do not remember about standing at the end,

(Testimony of Matthew William Musladin.)
but on the cylindrical surface of the hub you could see the crack.

Q. How deep was it?

A. I do not know; probably ran clear to the shaft.

Q. Why do you say "probably ran clear to the shaft"?

A. It would not have been necessary to shrink the bands on if it did not.

Q. Then you are judging the depth of the cracks and the extent of the crack from the fact that it had bands shrunk on it; is that so? A. Yes, sir.

Q. Do you know how much those Samson engines were worth when they were new?

A. No, I do not; not exactly.

Q. Do you know anything about the price of Samson gas engines?

A. No, I do not. I should think it would be about \$2,500 apiece, or in that neighborhood. I do not know exactly.

Q. You are forming your opinion from what you know of other gas engines of a similar pattern or of the Samson gas engine?

A. From the general market price for engines of that horse-power. [91]

Q. And you do not know what Samson gas engines are worth?

A. I do not know any of the prices of the Samson gas engines.

Q. In saying that it took a whole day to examine the engines, do you mean a day's time from your place over in Oakland and back again, or do you

(Testimony of Matthew William Musladin.)

mean a day's time there?

A. It was probably 7 or 8 hours right on the engines.

Q. How much were you paid for going over?

A. Just my regular wages as machinist.

Q. How much was that?

A. I believe at that time I was getting \$4 a day.

Q. When you went over did Mr. Cutting tell you the purpose of the examination?

A. No, except it was my impression that I was to look over those engines with a view to doing the repair work on them.

Q. How many cylinders were there on the two engines? A. Three cylinders on each.

Q. How much would it have cost to have rebored those cylinders?

A. What do you mean, just reboring, or including the cost of cartage to the shop?

Q. Reboring.

A. Just the reboring, about \$50 or so.

Q. Did you examine all six of the cylinders?

A. No, sir.

Q. Which ones did you examine?

A. We examined two on one of the engines and one on the other, if I remember correctly.

Q. Were they all in the same condition?

A. Yes, sir.

Q. Do cuts appear in the same place on the shaft?

A. On different bearings.

Q. How deep were those cuts?

A. Well, approximately 1/32nd of an inch. [92]

(Testimony of Matthew William Musladin.)

Q. How long were they?

A. They ran clear around the shaft.

Q. How much piping was there there, Mr. Musladin?

A. There was quite a pile of it; it was scattered around; I could not say exactly how much.

Q. Have you ever seen the engines since?

A. No, sir.

Q. Mr. Musladin, will you start with one of the engines and give us a list in detail of the various repairs that would have been necessary upon one and then upon the other one, and the figures for each detail of the work, showing how you make up your estimate of \$2,500 for the cost of repairing them?

Mr. TAUGHER.—In doing that, Mr. Musladin, you can refer to any memorandum that you have, so that you may be accurate.

A. Well, there was no separate estimate made on each engine, but I have a list of some parts that we figured on.

Mr. LILLICK.—Q. When did you make that list up? A. This morning.

Q. You made up the list this morning from what?

A. From such data as we had.

Q. Where did you get that data?

A. All in my report or from memoranda.

Q. You have your report with you, have you, the one you refer to?

A. This is my report. (Producing.)

Q. May I see the report, Mr. Musladin?

A. Yes.

(Testimony of Matthew William Musladin.)

Mr. TAUGHER.—I have not introduced that in evidence, but I will.

Mr. LILLICK.—Q. When did you make out this report, Mr. Musladin?

Mr. TAUGHER.—If you wish, I will offer this in evidence now [93] so that you can examine him with it in evidence,—if you care to.

Mr. LILLICK.—No. I will go ahead, and if you want to introduce it evidence later you may.

A. I made out the report immediately after completing the examination.

Q. You mean on that same day?

A. While I was still out there at the warehouse or shop.

Q. Now, Mr. Musladin, will you start with one of the engines and using this report, if you desire to do so, give an estimate from one item to the other of the cost of repairing the engine? I am referring only to the estimate I am handing you, not the one you made up this morning.

Mr. TAUGHER.—Well, I will explain that the one he has made this morning is exactly the same report that he made with the prices attached. I asked him yesterday to attach the prices of those various things to the report, which he had made the same day that he examined the engines, and this report that he made up yesterday is only the prices attached to the various repairs as required by his report made the day he examined the engines, on the 10th or 11th of October, 1910; the report that he made this morning is only to show the prices of

(Testimony of Matthew William Musladin.)

these things in his report; the report as to the repairs needed was made on the 10th or 11th of October, 1910.

Mr. LILLICK.—Q. Mr. Musladin, taking not the one Mr. Taugher has handed to you but the original report, will you state in detail from that the various items which you estimated necessary to repair the engines and give the price upon each item as you go down for repairing it? [94]

Mr. TAUGHER.—Mr. Musladin, I might state to you, you do not need to do it by memory, if he wants a detailed statement of that, you have a right to take your paper and write it down, and not attempt to carry all those things in your memory; or you may take any information that you have carefully compiled this morning in order to answer that question, for the purpose of accuracy.

A. I might say that no estimate was made at that time because I made this report, that the cost of the repairs would not be warranted.

Mr. LILLICK.—Will you read my question, Mr. Reporter?

(The last question repeated by the Reporter.)

Q. Mr. Musladin, leave that other paper go, do not refer to the other paper.

Mr. TAUGHER.—He has a perfect right to refer to that if he wants to answer that with accuracy.

Mr. LILLICK.—Mr. Commissioner, the witness was examined upon direct examination with reference to the cost of making repairs on these engines. The examination elicited an answer from the wit-

(Testimony of Matthew William Musladin.)

ness that the repairs of the engines would cost \$2,500. Subsequently, during the course of the cross-examination, the witness was asked whether or not he had made a report at the time that he examined the engines,—

Mr. TAUGHER.—Just a minute, Mr. Lillick.

Mr. LILLICK.—Wait until I finish, Mr. Taugher. He was asked whether or not he had made a report at the time he made the examination, and the witness testified that he had; then, following that a question or two afterwards, he said that this morning he made up an itemized list. He is now under cross-examination, and [95] I have asked him to take the original report and give us in detail the estimate that he would make of the repairs on the engines, and he was handed then by his counsel a statement he made up this morning; the witness is in as good condition as he was this morning to make up this estimate, and for the purpose of cross-examination I think we have a right to an answer to the question I have asked him without referring to any other papers he might have made this morning.

Mr. TAUGHER.—There is just one thing, that the only reason that I suggested his having that was, the question appears to be very easily answered, but he might just as well say, now give a history of California, and expect it all to be done from a man's memory. There are dozens of details that he cannot carry in his memory; the only thing I want is to have him give the particulars; he prepared the particulars this morning himself and he

(Testimony of Matthew William Musladin.) has them there to testify from. The original report does not contain any particulars, any more than general, and the reason he did not have the particulars in the original report was, he said in the original report that the engines would not justify repairing, and therefore no particulars were given at the time.

Mr. LILLICK.—This is cross-examination.

Mr. TAUGHER.—I think if he identifies the statement and prepared it, and it is true, there can be no objection to his referring to it.

Mr. LILLICK.—It is not in evidence.

Mr. TAUGHER.—I will offer it in evidence now.

Mr. LILLICK.—The witness is not Mr. Taugher's to offer anything in evidence.

Mr. TAUGHER.—But I am willing to. [96]

Mr. LILLICK.—You can go into that on redirect examination, after our cross-examination. We certainly have a right now without obstruction from the other side to cross-examine this witness with reference to the report he made.

Mr. TAUGHER.—I have no objection to that at all, Mr. Lillick; I am perfectly willing that you do this. It is only that the man could not be expected to carry in his memory all those details.

The COMMISSIONER.—That is his report?

Mr. TAUGHER.—Yes.

Mr. SPILMAN.—If he cannot answer the question, he can say so, and you can take him on redirect examination and bolster up your case by anything you desire on redirect examination.

(Testimony of Matthew William Musladin.)

Mr. TAUGHER.—We do not need any bolstering up of this case.

Mr. SPILMAN.—I think we are clearly entitled to cross-examine the witness in our own way.

Mr. TAUGHER.—You have my full permission to cross-examine in any way you like, provided it is fairly done. The only thing is I do not want to have a seeming cross-examination, which is not fair to the witness.

Mr. LILLICK.—Bearing in mind the purpose of the cross-examination, it seems useless to state to you that we have a right upon our cross-examination to examine the witness without reference to any suggestion from the proctor upon the other side, who will have the fullest opportunity upon redirect examination to go into this matter. The purpose of cross-examination is to test the witness' recollection and the witness' memory, and we are now appealing to that recollection and that memory.

The COMMISSIONER.—Proceed.

Mr. LILLICK.—Read the last question, Mr. Reporter. [97]

(The last question repeated by the Reporter.)

A. I cannot make another estimate now because in order to make an estimate of that kind it requires the use of catalogues and records of costs in the shop, cost of material and one thing and another; and it is out of the question to make an estimate of that size offhand.

Q. Then your answer to the question asked you upon direct examination as to the cost of repairing

(Testimony of Matthew William Musladin.) those engines being \$2,500 was only a general statement which you cannot at the present time verify by a detailed statement of how you arrived at that result?

Mr. TAUGHER.—That was not what he said. He said he could not make it without the assistance he had from the catalogue and records in the shop, which he has not with him now.

Mr. LILLICK.—Read the question, Mr. Reporter.
(The last question repeated by the Reporter.)

A. That was a statement based on careful figures made with the proper data at hand.

Q. When did you do that? A. This morning.

Q. Who was with you when you made that estimate? A. The superintendent of the shop.

Q. And who else? A. That is all.

Q. Was Mr. Cutting there? A. No, sir.

Q. Who told the superintendent of the shop what particular items you were figuring upon repairing?

A. I did.

Q. What did you tell the superintendent?

A. I told him the facts contained in this report—in a little more detail, I guess, from what I remembered. [98]

Q. Was that estimate of \$2,500 made up by you as a lump sum of all of those things, or did you take one by one the various items?

A. Each item was figured out and the total added up.

Q. What was the first item that you figured upon in the report?

(Testimony of Matthew William Musladin.)

A. The matter of cartage and truing up the crank-shaft.

Q. Cartage; how much did you figure for the cartage?

A. I do not remember the exact figures; something in the neighborhood of \$90 or \$100, I think.

Q. Will you figure up for the—

Mr. TAUGHER.—Mr. Lillick, he has his report here in detail, which he can refer to, with my full permission. I am willing to let you cross-examine him, showing him the report he made this morning, the details of it; you can examine him upon that as fully as you care to.

Mr. LILLICK.—You will have an opportunity to put that in evidence on redirect examination, if you desire to. The witness is now upon cross-examination. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

Q. What did you figure for truing up the crankshafts?

A. I do not remember the exact figures now.

Q. What was the next item you took up?

A. I do not remember the order of the items at all.

Q. Among the items that you figured, take any one of them and give the amount.

Mr. TAUGHER.—This is his report, his memorandum made at the time. I might instruct you, Mr. Musladin, that if you do not remember the order or the various amounts,—the order in which these things were taken up or the various sums that you put down [99] in arriving at that \$2,500, you do

(Testimony of Matthew William Musladin.)

not have to testify to about the amount, since you have the correct, absolutely correct amount here, which you can refer to with the permission of the proctor for the libelant, if you did not charge your memory with the order in which those things were estimated, and the various amounts for each particular repair, if you do not remember those, you do not have to say that you do, because the report is here from which you are at liberty to testify, and if they are endeavoring to get you to make a statement here that is not exactly borne out by your report, you do not have to get yourself into any little places of that kind; it is merely a trick which is palpable, and not endeavoring to bring out the true facts.

Mr. LILLICK.—Q. What other items did you figure on besides cartage and truing up the crank-shaft?

Mr. TAUGHER.—You can take your report and see as to any of those things, name the various things.

A. We figured on replacing the cylinder heads.

Mr. LILLICK.—Q. How much did you allow for replacing cylinder heads? A. I do not remember.

Q. When did you say you made up the amount—this morning? A. This morning; yes.

Q. Who gave you those amounts?

A. The superintendent. They were not given to me. I arrived at them from such data as I use in such cases.

Q. What data do you use in such cases?

(Testimony of Matthew William Musladin.)

A. Prices of labor and material, and such records as we have of the time consumed in these repairs.

Q. You examined these cylinder heads and know their condition as [100] they were upon the 10th or 11th of October, 1910, do you not?

A. I do; yes.

Q. Can you not give us some idea as to the figures that you arrived at as to the proper amount to charge for repairing them now?

A. I might make a guess at it, but that would not be worth while.

Q. Were you guessing at it this morning when you made up the figures. A. No, sir.

Q. How long did it take you this morning to make up your estimate of the whole repairing to be done upon this job?

A. A matter of a little over an hour.

Q. Was the superintendent with you all that time? A. Yes, sir.

Q. What other particular item in addition to cartage and truing up the crank-shaft and replacing the cylinder heads, did you figure upon?

Mr. TAUGHER.—For that you can look at your report, if you need to.

A. Those things we figured on, replacing the valve gear—

Mr. LILLICK.—Q. Replacing the valve gear; how much did you figure for that?

A. I don't remember the figure.

Mr. TAUGHER.—There are various items in that, Mr. Lillick.

(Testimony of Matthew William Musladin.)

Mr. LILLICK.—Mr. Commissioner, will you be good enough to ask the proctor on the other side to defer any remarks he has to make to me until the proper time comes to make them.

Mr. TAUGHER.—They are made to go into the record, not asides.

The COMMISSIONER.—I did not hear that; what is the difficulty between you? [101]

Mr. LILLICK.—The remarks that Mr. Taugher is making are not addressed to the witness so much as addressed to me, and I am certainly entitled to the privilege of cross-examining this witness without interruption from the proctor on the other side, except to introduce objections to my manner of cross-examination.

Mr. TAUGHER.—I am perfectly willing that everything I say go into the record.

The COMMISSIONER.—The Commissioner has no power to rule in a matter of that kind. The only way of doing is to have it all go into the record.

Mr. LILLICK.—Read that last remark of Mr. Taugher, will you, Mr. Reporter?

(The record repeated by the Reporter.)

Q. How many valve gears were there to replace, do you remember?

A. The valve gear—any valve gear for each engine—the valve gear includes all the parts necessary for the operation of the valve, including the valves.

Q. What are those parts?

A. Cams and gears, cam-shafts, rocker-arms and springs; a great number of parts.

(Testimony of Matthew William Musladin.)

Q. Any more than that, Mr. Musladin?

A. Yes, some more.

Q. Did you figure upon every one of those particular parts that you have just mentioned in making up your estimate?

A. Not all of them; no. We figured on the more important ones.

Q. Then the estimate that you have given here is an estimate made purely from your memory of the examination made by you upon October 10th or 11th, 1910, is it, Mr. Musladin?

A. My memory told me what parts had to be replaced or repaired, and we made the estimates on the cost of doing that work. [102]

Q. How many cams did you figure upon replacing in the valve gear of those engines? A. Six.

Q. How many rocker-arms did you figure upon?

A. Six.

Q. How many springs did you figure upon?

A. There would be 12 springs.

Q. Do you remember now, Mr. Musladin, bearing in mind that this examination was in October of last year, whether or not all of the cams and all of the springs and all of the rocker-arms needed replacing upon those engines?

A. They would all have had to be replaced to put the engines in reasonable working order.

Q. Did you try out the engines to see whether they would work at all?

A. It was impossible to try them out.

Q. Why was it impossible to try them out?

(Testimony of Matthew William Musladin.)

A. Some parts of them were in one place and some in another; they were not connected up at all.

Q. Then you do not know whether the engines would have worked if they had been set up, do you?

A. I know that it would not have worked without repair.

Q. Now going back to the cams; you say there was six of those cams in the two engines?

A. Yes, sir.

Q. What was the condition of those cams?

A. They were worn somewhat and badly rusted up.

Q. What was the condition of the rocker-arms?

A. The rocker-arms, in fact all the valve gear was about in the same condition.

Q. As a matter of fact, Mr. Musladin, it being a year since that examination was made, your recollection of it isn't very clear, is it? You have been doing work since that time over at the [103] shop and had dozens of other engines to go over?

A. I remember these two engines very clearly.

Q. Do you remember the separate parts of them very clearly?

A. Clear enough to make an estimate on the cost of the work on them.

Q. Would you be willing to go on record, Mr. Musladin, that an estimate of each particular part upon those engines, going through them one by one, and say that that estimate, speaking now of your recollection and knowing what your recollection is of it, as being a correct estimate of it?

(Testimony of Matthew William Musladin.)

A. I would be willing to do that as far as the larger parts are concerned, and the smaller or unimportant parts I generally estimate it in just a certain sum set aside or certain percentage of the rest.

Q. It is a year ago to-day since you made that examination, Mr. Musladin. Now, your recollection is not particularly clear, is it, as to the special parts? A. I do not understand the question.

Q. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. It is clear.

Q. Of those six cams were any one of them so worn out as to be impossible to use again?

A. No, it would not be impossible to use them again, but it would not be reasonable to.

Q. What do you mean by, would not be reasonable to? A. They would not work properly.

Q. In what way does the Samson gas engine differ from an Atlas gas engine, do you know?

A. Yes. The principal difference [104] is that the Atlas gas engine is what they call a T-type engine and the Samson is what they call an L-type; and that refers to the arrangement of the valves in the cylinder heads.

Q. Is the Samson gas engine in your opinion as good an engine as the Atlas gas engine?

A. Yes, sir, just about.

Q. Have you had occasion ever to repair a Samson gas engine? A. No, sir.

Q. Do you know whether or not they are considered as good engines on the market as the other en-

(Testimony of Matthew William Musladin.)
gines that are being sold here in San Francisco?

A. They are considered a good engine. They have probably as large a volume of sales as any engine on this market.

Redirect Examination.

Mr. TAUGHER.—Q. Now, Mr. Musladin, this report that Mr. Lillick handed you to look over while making his cross-examination, who made that report? (Handing.) A. I wrote this report.

Q. Is it entirely in your handwriting?

A. Yes, sir.

Q. When did you make that?

A. On this same day that I made the examination of the engines, before leaving the shop out there.

Q. In making this estimate of the cost, you took a copy of the report that you made a year ago and just attached to each paragraph the cost of making the repairs in that particular paragraph?

Mr. SPILMAN.—We object to that question on the ground it is leading and suggestive.

A. Yes, sir.

Mr. TAUGHER.—Q. Just state how you arrived at the estimated cost of those repairs? [105]

A. By consulting the prices for labor and material.

Q. Then, Mr. Musladin, as to the various parts needing repair or replacement, how did you find those? A. By consulting my report.

Q. Who asked you to make that estimate of cost, do you remember?

(Testimony of Matthew William Musladin.)

A. I think it was yourself asked me.

Q. When was that, Mr. Musladin?

A. Well, Monday, I think.

Q. Monday, of this week? A. Yes, sir.

Q. That is on the 9th of October, 1911?

A. I believe it was.

Q. Had you ever seen me prior to that time?

A. No, sir.

Q. And do you remember my request to you in arriving at the cost of this estimate, how you should arrive at it?

A. Just to arrive at a fair estimate.

Mr. TAUGHER.—I will offer in evidence the original report made by Mr. Musladin, in his own handwriting, and ask to have it marked Libelant's Exhibit 1, Musladin Examination.

(The report is marked "Libelant's Exhibit 1—Musladin Examination," and is as follows:)

[Libelant's Exhibit No. 1—Musladin Examination.]

"Condition of Samson Engines.

Crank shafts are badly cut on journals and at least one engine needs rebabbing.

The fly-wheels would be difficult of removal. Two of them have been cracked and have steel bands shrunk on.

Nearly all of the studs have been loosened by the action of salt water and will screw out easily, and in some cases the casting is hardly thick enough to stand retapping.

The valve gear is so worn and rusty as to necessitate its entire replacement.

(Testimony of Matthew William Musladin.)

Cylinder head castings are thin and rusted away around water [106] outlet, making it impossible to maintain a water-tight joint.

Crank brasses will need refitting. Also piston brasses.

All piping is practically useless.

Valve chamber castings are eaten away around water passages, and exhaust valves are worn out.

In general, the expense of repairing these engines would not be warranted by the result."

Q. In whose handwriting are those figures?
(Showing.)

A. In the handwriting of the superintendent.

Q. You were present when this estimate of the cost was made? A. Yes, sir.

Mr. TAUGHER.—I will offer this document in evidence and ask to have it marked Libelant's Exhibit 2—Musladin Examination.

(The document is marked "Libelant's Exhibit 2—Musladin Examination," and is as follows:)

[Libelant's Exhibit No. 2—Musladin Examination.]

"#779 Monadnock Bldg.

S. F., Cal.

Oct. 12, 1910.

Report of William Musladin.

Mr. Goodin,

Doak Gas Engine Co.,

San Francisco, Calif.

Dear Sir:

The following is the condition of the two Samson engines at Richmond, the property of H. C. Cutting:

Condition of Samson Engines.

Crank shafts are badly cut on journals and at least one engine needs rebabbing. [107]

5 days taking old crank-shafts	17 days @ 12.00. 204.00
8 days Babbetting, boring & Scraping.....	
material babbitt \$50.00...	
4 days turning shafts.....	babbitt 50.00 254.00

The fly-wheels would be difficult of removal. Two of them have been cracked and have steel bands shrunk on.

If new fly-wheels are made the cost will be..... 160.00

Nearly all of the studs have been loosened by the action of the salt water and will screw out easily and in some cases the casting is hardly thick enough to stand retapping.

New studs & Retapping..... 20.00

The valve gear is so worn and rusty as to necessitate its entire replacement.

12 valves and parts..... 120.00

Cams, etc. 100.00

Rocker-arms 100.00

Cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water tight joint.

Parts 20.00

Mat. 20.00

Labor 100. _____ 140.00

Crank brasses will need refitting. Also piston brasses.

Labor 50.00

All piping is practically useless.

_____ \$ 994.00

Brot. ford.....	994.00
Valve chamber castings are eaten away around water passages, and exhaust valves are worn out.	
Parts	30.00
Mat. 260 @ 6.....	15.
Labor, 15 days at 12.....	180.
	220.00

In general the expense of repairing these engines would not be warranted by the result.

30 piston rings	60.00
-----------------------	-------

Yours very truly,

DOAK GAS ENGINE COMPANY

Per (Signed) F. J. SWALL.

FJS/RD.

Cartage & Freight	100.00
Mach. time at Richmond.....	100.00
Knocking down & Assembling.....	600.00
Testing	100.00
	2174.00
Incidentals	200.00
	2374.00
6 Igniter 12.00 ea.....	72.
	2446.00."

Q. Mr. Musladin, what is the extent of your acquaintance with Mr. Cutting?

A. That I met him that day I made the examination.

Q. What day?

A. On the day of the examination of these [109] engines, and I had not seen him since until Monday.

Q. Monday of this week?

A. Yes, the 9th of October.

Q. What is the extent of your acquaintance with me?

(Testimony of Matthew William Musladin.)

A. That I had only seen you once before to-day; that was on Monday, the 9th of October.

Recross-examination.

Mr. LILLICK.—Q. Is Mr. Goodin the superintendent to whom you have referred?

A. No, sir; Mr. Goodin was a salesman at that time.

Q. Who is the superintendent whose handwriting appears upon the report? A. Mr. Swall.

Mr. LILLICK.—That is all.

Mr. TAUGHER.—That is all.

(An adjournment was here taken until Friday, October 13th, 1911, at 10 A. M.) [110]

[Testimony of H. W. Wernse, for Libelant.]

Friday, October 13th, 1911.

H. W. WERNSE, called for the libelant, sworn.

Mr. TAUGHER.—Q. Where do you reside, Mr. Wernse? A. San Francisco.

Q. Are you connected with the Richmond Dredging Company? A. I am.

Q. In what capacity? A. Secretary.

Q. How long have you been secretary of the Richmond Dredging Company? A. Since 1907.

Q. Who is the owner of the dredger "Richmond No. 1," her engines, boilers, machinery and equipment, if you know?

A. The Richmond Dredging Company.

Q. When did that company become the owner of the dredger "Richmond No. 1"?

A. It was built by that company in 1907.

(Testimony of H. W. Wernse.)

Q. Has the Richmond Dredging Company been the owner of said dredge ever since she was built?

A. Yes, sir.

Q. As secretary of the Richmond Dredging Company, have you had anything to do with the making of any charter-parties of the dredger "Richmond No. 1"? A. Yes, sir.

Q. With whom were such charter-parties made?

A. With the Standard American Dredging Company, Mr. Perry acting for the Standard American Dredging Company.

Q. Was the dredger "Richmond No. 1" ever chartered to anybody else other than the Standard American Dredging Company? A. No, sir.

Q. How many charter-parties were made?

A. Four.

Q. Can you tell us what rent per month the Standard American Dredging Company paid the Richmond Dredging Company for the dredger "Richmond No. 1" under each of those charter-parties?

[111]

A. Yes. On the San Rafael job they paid \$1,250 a month; on the Lake Merritt job, \$1,000 a month, and under the two charter-parties on the Eureka job, \$800 a month.

Q. Were you to receive anything in addition to the \$800 a month for the use of the dredger?

A. Yes. On the last charter-party Mr. Perry understood that we were figuring on the Santa Fe fill—

Q. I say, were you to receive anything in addition to the \$800 a month? A. We were to receive—

(Testimony of H. W. Wernse.)

Q. (Contg.) On any of those charter-parties?

A. We were to receive any pipe that was used on the Lake Merritt job, because when they were finished with the San Rafael job there was no shore pipe, and it required about 5,000 or a little more than 5,000 feet of pipe in the Lake Merritt job, and the Standard American Dredging Company was to buy the pipe and it was to become the property of the Richmond Dredging Company when they were finished.

Q. Where did the Standard American Dredging Company use the dredger under the first charter-party? A. In San Rafael.

Q. Where under the second charter-party?

A. Lake Merritt.

Q. Where did they use the dredger under the third and fourth charter-parties? A. At Eureka.

Q. Any place else?

A. Well, I understood the dredger was taken from there to Alameda and then to Walnut Creek; I think that is the place.

Q. Did you know at the time those charter-parties were made that the dredger was to be used at all of those places? A. No, sir.

Q. Where did you understand the dredger was going to be used under the third and fourth charter-parties?

Mr. LILLICK.—We object to what the witness understood. He can [112] say what he knows of the situation at the time with reference to what was said; we have no objection to that. I object to his

(Testimony of H. W. Wernse.)

stating what was understood. Ask him what was actually done and said at the time; I have no objection to that.

Mr. TAUGHER.—Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. At the time of making the third charter-party we agreed that the dredge could go to Eureka, and there is a clause in the charter-party, if I remember right, that provides that the Standard American Dredging Company and Mr. Perry personally would be liable for any damage or loss to the dredge occasioned by any other cause than fire; we had fire protection, but we did not have marine insurance. We expected him to take it up the coast to Eureka; and the fourth charter-party—

Q. (Intg.) Is that the third charter-party? (Handing.)

A. This is the third charter-party. And there is the clause which I wrote in myself, "but assumes all risk for loss or injury from any other cause."

Q. That is in whose handwriting?

A. All my own.

Q. The balance of the charter-party is—

A. In typewriting.

Q. That was initialed by—

A. By myself and also Mr. Perry.

Q. That interlineation? A. Yes.

Q. That interlineation was made before or after the execution of the charter-party?

(Testimony of H. W. Wernse.)

A. At the signing of the charter-party, before we signed it.

Q. At the signing of the charter-party?

A. Yes, at its signing.

Q. Was it before or after the execution of it?

A. It was done before the execution of the signatures.

Mr. TAUGHER.—I will offer that charter-party in evidence? [113]

Mr. LILLICK.—Is not it already in?

Mr. TAUGHER.—It is attached to the complaint. The only purpose I have in introducing that is to show that particular attention was called to that clause in the handwriting, and that the penalty was \$100 a day, and that was erased and \$50 inserted there. It is in the same words and figures as Exhibit "C" attached to libelant's second amended libel and supplemental libel. I will ask to have it marked Libelant's Exhibit 3, Wernse Examination.

(The charter-party is marked "Libelant's Exhibit 3, Wernse Examination.")

The WITNESS.—I do not think I finished the answer to the question you asked me, Mr. Taugher.

Mr. TAUGHER.—Q. What was said between the parties as to when the dredger "Richmond No. 1" would be returned to you?

A. Well, in December—

Q. No, at the time of making that third charter-party.

A. The dredger would be returned at the expira-

(Testimony of H. W. Wernse.)

tion of it, January 20th, or whatever the date is in that.

Q. How did it come that the Standard American Dredging Company was to pay so much less for the dredger "Richmond No. 1" on the Eureka job, that is, under the third and fourth charter-parties, than they were paying under the first and second charter-parties?

A. The Richmond Dredging Company, at the time the third and fourth charter-parties were entered into, were negotiating with the Santa Fe to do some work in Richmond, work of filling, and we wanted to have the return of the "Richmond No. 1," so that we could do that work, and Mr. Perry assured me that the "Oakland" could pump material to the furthest part of the fill without a booster, and would be less expensive to operate on this work than the "Richmond [114] No. 1" would be, and that if we would let him have the "Richmond" for the Eureka job, when we got ready for the Santa Fe job and the city job, which we were also figuring on, we could use the "Oakland," and it was on account of this condition and agreement made by Mr. Perry that we made the rent \$800 instead of a higher figure.

Q. Was there any other reason on the part of the Richmond Dredging Company in lowering the rent to Mr. Perry under these third and fourth charter-parties?

A. Well, Mr. Perry had spoken of losing money on the Lake Merritt job, and that was another reason why he wanted us to give him a chance to make some

(Testimony of H. W. Wernse.)

money on this Eureka job.

Q. What was the relation of the Richmond Dredging Company with the Standard American Dredging Company at that time, friendly or otherwise?

A. Very friendly.

Q. Would you have rented the dredger "Richmond No. 1" to any one other than the Standard American Dredging Company for the price mentioned in the third and fourth charter-parties?

A. No, sir.

Q. Are you positive as to that?

A. Yes; because we have had offers of higher figures. We have had offers of \$1500 a month from two different parties.

Q. When was the San Rafael job completed, about what time?

A. About, I would say, September, 1908.

Q. Was the dredger then returned to you?

A. The dredger was left in San Rafael, and there was a small contract to take up, and as Mr. Perry was having some trouble with the people, he asked me if we wanted to do that job, and I told him I guess we would do it, so I went over and took the contract for the San Rafael Development Company. [115]

Q. How long did you keep the dredger "Richmond No. 1" then?

A. We kept it until the making of the charter-party, until the Lake Merritt job.

Q. When was that, do you remember? That was about February 10, 1909, was it not, Mr. Wernse?

A. I think that is the date.

(Testimony of H. W. Wernse.)

Q. February 10, 1909, is the date of that, is it not?

A. Yes; that is the charter-party.

Q. Then when that charter-party was made who took possession of the "Richmond No. 1"?

A. The Standard American Dredging Company.

Q. About the date of making that charter-party, February 10, 1909? A. About that date.

Q. Who has had possession of the "Richmond No. 1" since that time?

A. The Standard American Dredging Company.

Q. Never been returned since then?

A. Never has been returned since February 10, 1909.

Q. Prior to the making of the charter-party of February 26, 1910, did you make any demand upon the Standard American Dredging Company for the return of the dredger "Richmond No. 1" to the Richmond Dredging Company? A. I did.

Q. About what time did you make that demand?

A. I called on Mr. Perry, the president of the Standard American Dredging Company, in December, 1909, and took up the matter with him of getting the dredge back so as to do the Santa Fe and the city job in Richmond; those two jobs would take in the neighborhood of 400,000 yards, and Mr. Perry stated—

Q. Cubic yards? A. Cubic yards.

Q. Cubic yards of what?

A. Of material. And Mr. Perry stated that he did not believe that they could return the dredge by January 20th, but that was the termination of the third

(Testimony of H. W. Wernse.)

charter-party, [116] and he would find out just how long they would have to keep it, and they wanted to know if we could let them have a longer time, and I told him no, that we must have the "Richmond" because we had these two contracts coming up—we had not signed up with the Santa Fe, but it looked like it was sure, because everything had been agreed upon but who was to pay for the moving of some east shore and suburban railway company's tracks in Richmond, and he then asked me if we could not use the "Oakland," and we discussed the merits of the "Oakland" against the "Richmond" on that particular piece of work. Mr. Perry told me that we could do the work much cheaper with the "Oakland" because we had to pump a distance of close to 3,000 feet, and the "Oakland" would do it without a booster, while if we used the "Richmond" we would have to use a booster; so we did not consent to the use of the "Richmond" until some time the latter part of January, providing we could get the "Oakland," and I believe on the 26th of February we signed the fourth charter-party for the dredges "Oakland" and "Richmond."

Q. The charter-party of February 26th covered the use, provided for the use, of the "Oakland" by the Richmond Dredging Company, and the use of the dredge "Richmond No. 1" by the Standard American Dredging Company? A. Yes, sir.

Q. Did the Standard American Dredging Company know at the time that you made the demand for the "Richmond No. 1" in December, and you say

(Testimony of H. W. Wernse.)
again in January? A. Yes.

Q. Did the Standard American Dredging Company know that you were negotiating for the Santa Fe job and the job of the city of Richmond?

A. Yes; they had figured on the Santa Fe job themselves. [117]

Q. And they knew that the Richmond Dredging Company were?

A. They knew that we were figuring on it and that we expected to get it.

Q. When did you sign up the Santa Fe job?

A. January 31, 1910.

Q. Did you know at that time about how much filling, how much dredging and filling would be required to complete the Santa Fe job and the job for the city of Richmond? A. Yes, sir.

Q. It was how much?

A. About 400,000 yards.

Q. Did the Standard American Dredging Company know how much would be required to do these contracts?

A. They did, because they asked me that; in making out the contract I placed that number of cubic yards in the contract—

Q. 400,000 cubic yards? A. Yes.

Q. That is the reason of putting—

A. That is the reason of putting in that amount of cubic yards.

Q. Did you expect to complete the 400,000 cubic yards of filling in the 60 days mentioned in that charter-party for which you had the "Oakland"?

(Testimony of H. W. Wernse.)

A. No.

Q. Was that discussed at the time with the Standard American Dredging Company?

A. It was discussed at the time with Mr. Perry, and the conditions were understood and agreed upon, that we should have the use of the "Oakland" for 60 days. I believe that is what the charter-party recites. But from what Mr. Perry and others had told me in reference to the capacity of the "Oakland"—

Mr. LILLICK.—Q. From what they have or what they had?

A. From what they had told me we expected to complete the hardest part and the greatest part during the 60 days, because [118] we could pump the material the furthest distance with the "Oakland," and at the end of 60 days we expected to have the return of the "Richmond," and could then complete the part that was nearest to the dredge and easiest part within the time limit allowed on our contract.

Mr. TAUGHER.—Q. Did that filling have to be done within a certain time? A. Yes, sir.

Q. Did the Standard American Dredging Company know that it had to be done within a certain time? A. Yes, sir.

Q. Under the terms of your contract with the Santa Fe and the city of Richmond—

A. (Intg.) I spoke of that a number of times with Mr. Perry.

Q. Did the Richmond Dredging Company give bonds to complete those contracts within a certain

(Testimony of H. W. Wernse.)
time? A. Yes, sir.

Q. Did the Standard American Dredging Company know at the time of the making that charter-party that the Richmond Dredging Company had given a bond to complete those contracts within a specified time?

A. They did. And we had to give a bond to the Standard American Dredging Company, and I discussed that with Mr. Perry, telling him that the expense of the bonds was taking up all our profits.

Q. Was anything said at the time of the making of that charter-party of February 26, 1910, as to the necessity of the Richmond Dredging Company having continuous use of the dredger at Richmond until the 400,000 cubic yards of filling was completed?

A. Yes; that was the condition under which we executed that charter-party, agreeing to use the "Oakland" and to give them a chance to finish their job at Eureka with the "Richmond"; it would have been almost impossible for them to have brought the [119] "Richmond" down at that time and moving another dredge there.

Q. Then the making of that charter-party of February 26th, 1910, was done at whose solicitation?

A. At the solicitation of Mr. Perry.

Q. Was the charter-party of February 26th, 1910, given to permit the Standard American Dredging Company to use the "Richmond No. 1" at any place other than Eureka?

Mr. LILLICK.—I object to the question as leading.

(Testimony of H. W. Wernse.)

Mr. TAUGHER.—Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. That charter-party was made on the condition to permit the Standard American Dredging Company to finish the Eureka job as it would be almost impossible for them to send another dredge up there to take the place of the "Richmond."

Q. And when they had finished the Eureka job?

A. We expected to get the "Richmond" back and return them the "Oakland." That is why the 60 days was put in there.

Q. Did the Richmond Dredging Company bid on some work to be done at Stockton? A. Yes, sir.

Q. Can you tell me about when those bids were opened?

A. I believe about the middle of August, 1910.

Q. Who was the successful bidder for that work?

A. The Richmond Dredging Company.

Q. Did the Richmond Dredging Company do the work? A. No, sir.

Q. Why?

A. Well, their dredge was in the possession of the Standard American Dredging Company at the time, and we could not get the dredge to do the work.

[120]

Q. Did anyone ever tell you that the Richmond Dredging Company could not do that Stockton job?

A. Yes. There was a gentleman by the name of Mr. Newhall, who I understood bid on the job too, came to the office on the same day and said, "You

(Testimony of H. W. Wernse.)

fellows have got the job, but I understand you have got no dredger to do it with," and I told him we had the dredge "Richmond." "Oh," he says, "you will never get the dredge 'Richmond' to do the job." He says, "I was walking down the street with one of Mr. Perry's men, Mr. Connor, and he says, 'Why, the Richmond Dredging Company will never get the dredge; we have got that, and they can never get that dredge to do that job.' "

Q. That was not what I expected. Did any officer of the Standard American Dredging Company ever tell you you could not do the Stockton job?

Mr. SPILMAN.—We object to that as leading.

Mr. TAUGHER.—I will withdraw that question.

Q. Did any officer of the Standard American Dredging Company say anything to you about that time concerning the Stockton job?

A. I don't remember the conversation, if there was any.

Q. You did discuss that with Mr. Perry and other officers of the Standard American Dredging Company?

Mr. LILLICK.—I object to the form of the question, Mr. Taugher, on the ground it is leading.

Mr. TAUGHER.—Q. What discussion, if any, did you have with Mr. Perry or Mr. Connor or Mr. Cumming, concerning the amount of work to be done by the Richmond Dredging Company under its contracts with the Atchison, Topeka & Santa Fe Railroad Company and the city of Richmond?

A. Why, I discussed the matter with Mr. Perry on

(Testimony of H. W. Wernse.)

numerous occasions and at one time Mr. Cummins [121] and myself went to Richmond and sounded the material to be cut and pumped on to the land, to get a figure from them as to what it would cost, for at that time they figured they could do the job and possibly do some work for us at the same time, they knowing that we had the city job at that time, amounting to 93,000 yards, and they were going to figure or did figure on the Santa Fe job.

Q. Would you say that they were thoroughly familiar with the amount of work to be done by you under those contracts or otherwise?

A. They were familiar, because they put the figure on to the Santa Fe Company on the Santa Fe job, and the material would have to be taken from the canal at Richmond, and they would have had, had they gotten the contract from the Santa Fe, to have done some of the city work too for their dredge would be the one in the canal; they knew that we had the 93,000 yards for the city and the 236,000 yards for the Santa Fe. They also knew we were not going to use any levees on the city work, and it would require more than 93,000 yards for that work. That was the reason that the amount was put at 400,000 yards instead of the exact amount of the two contracts.

Q. Did you ever have a conversation with Mr. Perry between the time that the dredger was libeled, on or about the 2d day of September, 1910, and the first of December, 1910, concerning the ownership of the new engines that had been placed on the

(Testimony of H. W. Wernse.)

“Richmond No. 1” by the Standard American Dredging Company in substitution for the old engines?

A. Yes. Mr. Perry came to the office in the Monadnock Building of the Richmond Dredging Company, and met Mr. Cutting and myself in Mr. Cutting’s private office, and asked us what we wanted with those engines, and Mr. Cutting told him, he says—Mr. Cutting says: “Why, Mr. Perry, you don’t think that you [122] can wear out the engines on that dredge and then put on new ones, and after you have finished with the work you have got to do, put back on the old worn out engines that ought to be in the scrap heap and return them, do you?” And Mr. Perry says, “You will never get those new engines.” He says, “Why don’t you turn it into an electric dredge? I have got an electric motor, it is about 250 horse-power, that I will give you, but I will never give you those gas engines.”

Mr. TAUGHER.—That is all.

Mr. LILLICK.—No questions.

(A recess was at this point taken until 1:30 P. M.)

[123]

AFTERNOON SESSION.

[Testimony of H. C. Cutting, for the Libelant.]

H. C. CUTTING, called for the libelant, sworn.

Mr. TAUGHER.—Q. Are you connected with the Richmond Dredging Company?

A. I am the president.

(Testimony of H. C. Cutting.)

Q. How long have you been the president of the Richmond Dredging Company?

A. Ever since it was organized.

Q. About how long ago was that?

A. It was organized in 1907.

Q. Who is the owner of the dredger "Richmond No. 1," her engines, boilers, machinery, and equipment, if you know?

A. The Richmond Dredging Company.

Q. How long has the Richmond Dredging Company owned the dredger "Richmond No. 1"?

A. They built it and have owned it ever since.

Q. Are you well acquainted with the dredger "Richmond No. 1"? A. I built it.

Q. You built it? A. Yes.

Q. Just briefly, describe the dredger "Richmond No. 1."

A. Well, it is a watercraft or vessel with a barge or scow-shaped hull.

Q. About how long? What are her dimensions?

A. About 75 feet long, and 30 feet beam, and drawing about 4½ feet of water, with a superstructure containing machinery, pilot-house, galley, messroom and cabin accommodations for crew.

Q. For how many men? A. 16 men.

Q. How does the dredger "Richmond No. 1" operate?

A. It operates afloat and not otherwise. [124]

Q. Not otherwise? A. No.

Q. What is her particular occupation?

A. Well, she was built for the purpose of dredg-

(Testimony of H. C. Cutting.)

ing a ship canal at Richmond and cleaning out—her occupation is to clean out canals and harbors and make fills.

Q. Since her construction has she ever been operated otherwise than afloat? A. No, sir.

Q. Is it possible to operate her otherwise than afloat?

A. Not without taking the machinery off the boat and using it on a differently constructed affair.

Q. Well, that would not be operating the dredger "Richmond No. 1"?

A. No. The dredger "Richmond No. 1" cannot operate any other way than afloat.

Q. Is the dredger "Richmond No. 1" equipped to go in navigable waters?

Mr. LILLICK.—I object to that as leading and suggestive.

Mr. TAUGHER.—Q. Describe her equipment as to her navigability, if any.

A. Well, she is equipped to navigate any place, if *have* you have a mind to take her. She has made one ocean voyage.

Q. Where to? A. To Eureka and back.

Q. Eureka and return? A. Yes, sir.

Q. Did she carry her machinery aboard of her on the trip?

A. Yes; she carries all her machinery and ordinarily carries all her equipment and can carry any other supplies that are desired to be put on board.

(Testimony of H. C. Cutting.)

Q. Was she strongly enough equipped and built to navigate in the ocean?

A. She did navigate upon the ocean safely.

Q. That is not an answer to my question.

A. That is the best proof of her ability to navigate upon the ocean, that she did navigate upon the ocean and she was built to navigate any place, carrying her machinery and whatever other supplies were necessary for her to carry.

Q. Had you anything to do with the making of any charter parties for the dredger "Richmond No. 1"?

A. I had to do with the making of all of them.

Q. How many charter-parties for this dredger were made? A. Four.

Q. To whom were they made?

A. The charter-parties were made with Mr. Perry. I think the charter-party that was with the San Rafael job was taken in the name of the California Reclamation Company; the others were made with the Standard American Dredging Company, but it is the same proposition.

Q. What do you mean by the same proposition?

A. Well, I mean that both companies have the same officers; it is the same thing, only a different name.

Mr. LILLICK.—We ask that the answer be stricken out upon the ground that it is the conclusion of Mr. Cutting.

Mr. TAUGHER.—Q. What rent was fixed in each of those charter parties, if you know?

(Testimony of H. C. Cutting.)

A. The one for the San Rafael job was \$1,250 per month. The Lake Merritt job was \$1,000 per month and all of the pipe, which we figured at the time would amount to about \$6,000.

Q. How long was that Lake Merritt charter-party to run?

A. I cannot remember definitely whether it was four or six months, but it was understood that it was to run until they [126] completed the job. That was the understanding.

Q. What would the pipe be worth, approximately, in addition to the \$1,000 a month that you were to receive upon that charter-party?

A. Well, I think the job actually took between 6 and 7 months, and the pipe, I believe, was worth about \$6,000; the material that was pumped out of Lake Merritt would wear the pipe very little more than just straight water would because 98 per cent of it was just slickings—mud—which does not wear the pipe at all.

(At this point the witness was temporarily withdrawn.)

[Testimony of George Hiram Betts, for Libelant.]

GEORGE HIRAM BETTS, called for the libelant, sworn.

Mr. TAUGHER.—Q. What is your full name?

A. George Hiram Betts.

Q. What is your occupation? A. Engineer.

Q. Have you had any experience in operating or repairing gas engines? A. Yes, sir.

Q. What experience have you had in and about

(Testimony of George Hiram Betts.)

the operating and repairing of gas engines?

A. I was on their dredger during the Lake Merritt job.

Q. On what dredger?

A. The "Richmond" dredger.

Q. You mean the "Richmond Dredger No. 1"?

A. Yes, sir.

Q. You were on that dredger when?

A. I was on it while it was in Richmond and in San Rafael and in Lake Merritt.

Q. How long were you working on the dredger "Richmond No. 1" altogether, just approximately?

A. Well, about three years at the least.

Q. What position did you occupy on that dredger?

A. Engineer. [127]

Q. Are you familiar with the engines that were aboard the "Richmond No. 1" prior to 1909 and during 1909? A. Yes, sir.

Q. Do you remember when the Standard American Dredger Company moved the dredger "Richmond No. 1" into Lake Merritt? A. I do.

Q. Were you familiar with the condition of those engines prior to their moving into Lake Merritt?

A. Yes, sir.

Q. What condition were they in just prior to being moved in there, as to repair or want of repair?

A. They were in need of repair; they were pretty badly run down.

Q. Were you employed on or about that dredger during the time she was being moved to Lake Merritt?

A. Yes, sir.

(Testimony of George Hiram Betts.)

Q. What was being done with those engines during that period, if you know?

A. They were under a general course of repair.

Q. While they were being moved into Lake Merritt? A. Yes, sir.

Q. Were the engines put in proper repair before operations were commenced in Lake Merritt?

A. Well, I do not consider that they were.

Q. What do you consider their condition was at the commencement of operations in Lake Merritt?

A. The machinist they had employed at the time made the remark that—

Mr. LILLICK.—Mr. Betts, just a moment. And I make this as an objection. We do not want what somebody else told you, we only want what you know yourself. I will object to the remainder of the answer of the witness as hearsay if he testifies to what somebody else told him.

Mr. TAUGHER.—Q. You may proceed with your answer as you [128] started and tell it and it will be subject to any objection Mr. Lillick wants to make subsequently. You can proceed with your answer just as you were starting it.

A. Well, the repair work was cut short before it was entirely completed.

Q. Then what would you say as to the condition of the engines when they started in Lake Merritt?

A. Well, the engines were in pretty fair condition.

Q. Did they still need repairing, or otherwise, when they started in Lake Merritt?

A. Yes, sir, they did. They could have been re-

(Testimony of George Hiram Betts.)

paired still more than they had been.

Q. What would have been the effect of proper repairs before they commenced working in Lake Merritt?

A. Well, it would have had a tendency to make the engines last longer than they did and before other repair work would have been necessary.

Q. How many hours a day were those engines operated in Lake Merritt?

A. 24 hours a day barring stops; they were supposed to be in operation 24 hours. Of course, there were necessary stops.

Q. What caused those stops usually?

A. In order to shift the pipe-line and the pontoon line, lengthen out the pontoon line when they moved ahead.

Q. The dredger does not continue in operation while they are shifting the pipe-line or putting in pontoon pipe? A. No, sir.

Q. It is impossible to have it going then?

A. Yes.

Q. Was any alteration made on the pump pulley of the dredger after it started operation at Lake Merritt. A. There was.

Q. In what way?

A. Well, they reduced the size of the pulley on the pump shaft, which runs the main pump. [129]

Q. How long was that after moving into Lake Merritt?

A. Well, it was, as near as I can recollect, about

(Testimony of George Hiram Betts.)

two weeks or so, or ten days, or something similar to that.

Q. What was the effect of that change made?

A. Well, the effect was that it reduced the speed of the engines.

Q. What effect did that have on the engines, on the pumping?

A. It affected the engines in such a way that it would not come up to its regular speed; it is guaranteed to run say a certain speed, and in order to develop a certain amount of power it had to come up to that speed.

Q. Did that increase the output of the dredger by doing that, or have a tendency to increase it?

A. Well, providing it would increase the speed of the pump, it would increase the output of the dredger, but as far as my judgment is concerned, I could not see where it would increase the output of the dredger by doing it.

Q. That is, when it increased the speed of the engine it increased the speed, of the pump; is that what I understand you to mean?

Mr. LILLICK.—We object to the question on the ground that it is leading.

Mr. TAUGHER.—Q. You say, Mr. Betts, that it decreased the speed of the engine; what effect did the decreasing of the speed of the engine have on the speed of the pump?

A. Why, I do not think—I could not see where it would increase the speed of the pump any. It decreased the speed of the engine; of course that is one

(Testimony of George Hiram Betts.)
thing bad for the engine.

Q. Did that have any effect of making the wear and tear on the engines greater?

Mr. LILLICK.—I object to the question as leading. I will ask you, Mr. Taugher, to frame your questions so as not to lead the [130] witness.

Mr. TAUGHER.—Q. What effect on the wear and tear of the engine did decreasing the speed of the engine have, in the manner you have described?

A. Well, it had a tendency to loosen up the bearings and affect the engine all over.

Q. To a greater or less degree—would you say it was to a greater or less degree, the engines would have been affected, had the speed remained as it was when the dredger was delivered to the Standard American Dredging Company?

Mr. LILLICK.—I object to the question on the ground that it is leading.

A. Well, the engines would hold up longer by running as they were when they first went in, without this change.

Mr. TAUGHER.—Q. What care was taken of those engines by the Standard American Dredging Company during the time that you were employed on the dredger "Richmond No. 1"?

A. Well, they aimed to keep them in pretty good care, but there could have been a little more attention paid to them than there was.

Q. How many hours a day did you work the dredger? A. 12 hours.

Q. Who took your place during the time that you

(Testimony of George Hiram Betts.)
were not on duty?

A. Well, there was several men employed opposite to my shift. I don't remember their names. I had no occasion to set their names down, to memorize them.

Q. Did you observe their manner of running the engines and operating them? A. Yes, sir.

Q. What would you say as to the competency of those men to properly operate and care for those engines?

A. Well, the competency, some of them were good and some of them were bad.

Q. How many of them would you say were competent men? [131]

A. I should judge there was two of them that was competent men.

Q. And how many did they employ on there whom you would consider incompetent to properly operate that dredger?

A. Well, I don't remember the number that was aboard, employed.

Q. Well, did they have more than one that you considered incompetent? A. Yes.

Q. Several of them? A. Yes.

Q. Have you an idea how many men were employed on there?

A. It seems to me that there were five men employed to my knowledge, at different times.

Q. And only two of those that you considered competent at all? A. Yes, sir.

Q. While you were in charge of those engines on

(Testimony of George Hiram Betts.)

that dredger, did they get in such condition that they required repairing?

Mr. LILLICK.—I object to that on the ground it is leading.

Mr. TAUGHER.—Q. Answer the question.

A. Yes, they were in need of repairing several times.

Q. Did you report at any time to the man in charge—

Mr. LILLICK.—Allow me to interrupt the question. I object to it upon the ground it is leading and suggestive, and I ask you, if you can, to please frame your questions so that they will not be leading.

Mr. TAUGHER.—Mr. Lillick, you may object to them, as you please.

Mr. LILLICK.—I know. But it is usual among attorneys when their attention is called to anything of that sort, to change the form of their questions; every one knows that that character of a question is improper, so worded.

Mr. TAUGHER.—Anything that I might ask that might be answered by yes or no is merely preliminary to the question which I am [132] going to ask, and it is more for the purpose of directing his attention to one particular thing which happened during the months or years of work on the dredger than for any other reason or with any idea on my part to suggest the answer to the question. I thought we were endeavoring to shorten this record, and I thought that all of those preliminary matters had been stipulated to, that I have been directing his attention to.

(Testimony of George Hiram Betts.)

Q. You can tell us what you did concerning the reporting of those engines to the man in charge of the dredger, if anything?

A. Well, whenever I saw there was any need of repairing her I reported it to him, the captain, that was in charge of the dredger.

Q. Can you tell us how many times you reported the dredger needing repairs?

A. Well, it was a common occurrence; I made several reports, a good many of them.

Q. How could those reports by you be received by the captain?

A. Well, they would be looked into if the time provided, we was laid off and stopped, we was ready to stop,—the necessary repairs would be done to relieve the engine, whatever was in bad order, providing we had a regular stop.

Q. But if you did not have a regular stop?

A. Well, we would continue on as long as we could until we either had to do it or make the stop for some other purpose.

Q. For some other purpose? A. Yes, sir.

Q. What were your instructions, if you had any, as to shutting down or continuing the engines in operation when, in your opinion, they required repairing?

A. I do not remember saying that I had any instructions to shut down the engines without notifying the men in charge of the machine. [133]

Q. What were your instructions as to the way in which you should operate the engines, having refer-

(Testimony of George Hiram Betts.)

ence to whether or not you would have them run close to their capacity, or otherwise?

A. My instructions was to run them as close to capacity as possibly could be.

Q. Would you consider that those engines were overloaded in the Lake Merritt job by the Standard American Dredging Company?

A. I consider they were; they was trying to do a heavier load than they could handle.

Q. For how long a time?

A. During the time this here pulley was changed from a larger to a smaller size.

Q. You say that pulley was changed. How long was that after you went into Lake Merritt?

A. I should judge about within two weeks or 10 days, something like that. I don't remember the exact time.

Q. Was the pulley changed back to the original size while the dredger was in Lake Merritt?

A. Not to my knowledge.

Q. How did those engines run over at Richmond before the dredger went to San Rafael?

A. They run good.

Q. Did those engines produce sufficient power to properly operate the dredger before they went to San Rafael? A. It did; yes.

Q. With good care what would you say would have been the life of those engines from the commencement of the work in Lake Merritt?

A. Well, ordinarily, I should judge that the engines under good care ought to be good for 10 or 12

(Testimony of George Hiram Betts.)

years of continuous operation, under good care.

Q. Do you know if while the dredger was operating in Lake Merritt the engines got in such shape that the water was getting into the cylinder heads?

A. I do; yes. [134]

Q. Did you report that? A. I did.

Q. How was that report received?

A. Well, similar to the rest of the reports; the repairing was delayed until we had shut down.

Q. How did that affect the engines, if any?

A. Well, a question of that kind ought to be looked into right away; it has a tendency to injure the engine to a certain extent; it destroys the lubrication of the engines, if there is water in the cylinders; oil and water won't mix together, the engines will be running dry and cause hot bearings, and affects the engine all over.

Q. Could you tell us what would be the immediate result of the failure to stop and make that particular repair?

A. Yes. When there is a leak in one cylinder that cylinder cuts out; that cylinder is useless until it is repaired; that throws a heavier strain on the rest of the engine.

Q. What effect would that have on the crank shaft, if any?

A. Well, it has a tendency to loosen up the bearings, and it has a tendency to melt the babbitt out of the bearings, loosen up the fly-wheels, and effect the engine all over.

Q. Did the crank-shaft of one of the engines break

(Testimony of George Hiram Betts.)

at Lake Merritt at any time? A. Yes, sir.

Q. How did that happen; what caused it to break, if you know?

A. Well, I should judge the engine was running at the reduced speed, lower than it was supposed to run at, and on account of the engine being in bad condition, the bearings not running true, I should judge that that was the cause of it breaking.

Q. Do you remember the fly-wheels getting loose at any time? A. Yes, sir.

Q. On the Lake Merritt job? A. Yes, sir.

Q. What was done to the fly-wheels, if you know?

[135]

A. It was patched up temporarily to keep the machine in running order.

Q. Were they properly repaired?

A. No, I would not consider that they were.

Q. What was the effect of the repairs or attempted repairs that were put upon them?

A. Well, it had a tendency to wear the key seat and make it still looser than it was when it first happened, and make it harder to repair it.

Cross-examination.

Mr. LILLICK.—Q. That key seat is a little place in the hub, is it not, right where the fly-wheel itself is fastened upon the axle?

A. Yes. The fly-wheel slides on to the end of the shaft, and there is a key seat out in the fly-wheel, in the hub of the wheel, half in the wheel and half in the shaft, and then there is a key drove in in this seat; it is made with a little slot deeper so that it can

(Testimony of George Hiram Betts.)
be drove in tight.

Q. In saying that it was patched temporarily, how did they patch it?

A. Well, there was shins put in, tin shins; to make a proper job of it it should have been put into a machine in a machine-shop, planer or shaper, whatever they use to true up the key seat and put a key in that would fit the seat. Instead of that there was tin put in in place of it, to take up the wear of the old key, and of course tin naturally works loose again, and as soon as it works loose again, the hammering of the engine, it would have a tendency to work out and wear out the key seat still larger and makes the corners of the seat round, and there would be no good bearing surface for a key.

Q. Did they have to repair key seats more than once when the fly-wheels [136] became loose on the Lake Merritt job, do you know?

A. Well, yes, it was a number of times it came loose.

Q. A number of times came loose?

A. Yes, sir.

Q. Do you know whether or not it was repaired after that by putting in a different kind of key or arranging it properly?

A. Well, the seat was worked out and another key put in that was supposed to fit it, but it still got loose again.

Q. How often in doing the work at Lake Merritt was it necessary to stop work to change the pipes or these ordinary stops that you say were waited for to

(Testimony of George Hiram Betts.)

repair the engines? I am speaking now of each day.

A. Well, I can't say.

Q. Approximately, in a general way?

A. There was times when they might run an hour, and they might run six hours, and they might run ten hours without stopping.

Q. You were in charge of the engines in person, were you not, while you were on the dredger as engineer, during the shift that you worked?

A. Yes, sir.

Q. You were responsible for the engines during that time, were you not?

A. Well, I was employed the same as an ordinary engineer.

Q. Were not your orders in every respect carried out, Mr. Betts, with reference to what should be done upon the engines?

A. No, I do not consider they were.

Q. Do not? A. No.

Q. On what occasions and why?

A. Well, when there was a break down, or repair work needed to be done, it should be done at the time it needs it.

Q. Can you say now how often, if at all, you told the captain that the engines needed repairing, that he did not repair the [137] engines or have the engines repaired for you during the Lake Merritt job?

A. I cannot say but what he repaired it but not at the time I would mention it to him.

Q. Do you remember how long the longest time was

(Testimony of George Hiram Betts.)

that you were made to wait before repairing the engines by him after you had reported it?

A. Well, I do not call it to my mind just exactly the correct time.

Q. Do you think the engines were seriously injured at any time by reason of the work not having been done upon them when you asked that they be repaired, Mr. Betts?

A. Well, taking it from one time to another, I do think that it was the cause of the engines being in the condition that they were, because by delaying the repair works several times it has a tendency to make it serious in time.

Q. Was not the same course pursued exactly after you went to work on the Lake Merritt job that was pursued at San Rafael, with reference to repairs and work upon the engine?

A. Well, it was similar, something similar to the work, in both places, when the repair work was done.

Q. Isn't it a fact that in working a dredger, as a matter of common custom and usage the engine as a rule when in need of repair, unless the repair is very serious, the time is arranged so that the repair work is done while they are making these stops?

A. Well, I don't know as it is.

Q. You were on the dredger for how long before you went over to Lake Merritt? Do you remember the time, approximately?

A. Well, I was on it, I should judge, over two years before that.

Q. Now, in those two years do you think, Mr.

(Testimony of George Hiram Betts.)

Betts, that any [138] difference was made with respect to how the repair work was done at Lake Merritt and the repair work was done previously on the other jobs you worked on? Was not the same course pursued at Lake Merritt practically as had been pursued upon the other jobs during the time you had been working on it?

A. Well, no, not exactly.

Q. You think they were a little more lax on the Lake Merritt job than on the San Rafael and Richmond work?

A. Well, taking it generally right straight through, I think they were.

Q. At Richmond, when you worked at Richmond, did the captain always shut down immediately when you reported anything wrong with the engines?

A. Yes.

Q. Were you on the dredger as engineer the first time she was used after she was built, Mr. Betts?

A. Not the starting up of the dredger, no; I was not an engineer at that time.

Q. Do you know who the pump was built by?

A. I think it was built by the United Iron Works.

I am pretty certain it was.

Q. What is its size? A. 12-inch pump.

Q. What is the diameter of the runner?

A. 30 or 32 inches—30 or 32 inches; something like that. I had no occasion to look after that.

Q. Was it a closed or open runner?

A. I am not familiar with pumps enough for that, but I should judge it was a closed runner.

(Testimony of George Hiram Betts.)

Q. Do you know how many veins it had?

A. Well, I believe it had 2.

Q. Do you recollect the width of the inner blade?

A. I could not say; I could not give you a good description of the pump definitely, a correct description of it at all, any more than merely—

Q. I was only asking about your recollection.

[139]

A. I should judge it was about 8 inches wide, something like that.

Q. Do you know what the speed of the gas engine was? A. 150 revolutions a minute.

Q. 150 revolutions a minute? A. Yes.

Q. The pulley that you were talking about a little while ago, was that the pulley on the engine or on the pump shaft? A. On the pump shaft.

Q. On the pump shaft? A. Yes, sir.

Q. And you say that was what at first?

A. It was reduced from a larger size to a smaller size.

Q. Do you know what the sizes were?

A. I think it was reduced from 30 inches to 28 inches.

Q. And do you know the diameter of the pulley on the gas engine?

A. 58 inches, I think; I ain't certain.

Q. Do you know what the revolutions of the pump shaft were a minute?

A. I do not remember that; I did have it figured out.

(Testimony of George Hiram Betts.)

Q. The revolutions of the engine were 150, you say?

A. Yes. That is what they are supposed to run at.

Q. Do you know whether they did run that over on the Lake Merritt job?

A. They did not run that.

Q. How high did they run?

A. They run as low as 130, and 128 and 122 and 118 sometimes.

Q. How fast did they run upon the San Rafael job?

A. Well, they came up to speed there on a good deal of the work.

Q. Did they come up to speed on the latter portion of the work at San Rafael?

A. On what part of the work?

Q. On the latter portion of the work, just before they were moved over to Oakland?

A. At times they did, yes. [140]

Q. What was the average rate of speed, as you remember it, just as they were finishing the San Rafael job? A. Well, I don't remember that.

Q. Were you on her during the time that she was working on the San Rafael job just before she went over to Lake Merritt? A. Yes, I was on her.

Q. Did she work on any other job in between those two?

A. Well, you have got me tangled up here, on one proposition here. I believe Mr. Cutting was operating a dredger at San Rafael.

Q. But you were on her as engineer at that time?

(Testimony of George Hiram Betts.)

A. Yes, I was on her during all the work that was done in San Rafael.

Q. Well, was any work done after the time she ran at San Rafael and finished that job and the Lake Merritt job?

A. Do you mean the job that the Standard American Dredging Company had, between that and the Lake Merritt job?

Q. Yes.

A. Yes, Mr. Cutting had a job he worked on.

Q. Do you know how long that lasted?

A. I believe it was three months, something like that.

Q. Well, were the engines run down in power between the time you finished the San Rafael job and the time you went over to Lake Merritt?

Mr. TAUGHER.—I will state to you, Mr. Lillick, there was a job at San Rafael, part of which was done by the Standard American Dredging Company and subsequently some more work at San Rafael by the Richmond Dredging Company. I believe the Richmond Dredging Company took over the work the Standard American Dredging Company stopped.

Mr. LILLICK.—I understand, Mr. Taugher.
[141]

Q. You were working on the dredger as engineer during all that time, were you not, Mr. Betts?

A. Yes.

Q. What I am asking you is, were the engines when they first started to work over at Lake Merritt in the same condition as to speed as they were when

(Testimony of George Hiram Betts.)

you finished the work over at San Rafael?

A. Well, just about.

Q. Then the speed of the engines at San Rafael was approximately what it was over at Lake Merritt when you commenced the work at Lake Merritt; is that a fact?

A. Yes, when they first started in, the first work that they done.

Q. Do you mean to say then that when the work was first commenced over at San Rafael the engines ran at the speed, which I understood you to say was 150? A. Yes.

Q. And then during that San Rafael job they ran down so that they subsequently made 130, 128, 122 and 118?

A. I understood that answer was for the Lake Merritt job?

Q. Yes. A. 118.

Q. Then when did the engines commence to run down from 150 to 118—did they gradually decrease their power?

A. Yes, they decreased their power when they decrease in speed.

Q. When did that decrease commence? At the San Rafael job I am speaking of now.

A. During the latter part of the work.

Q. Do you know whether she was then being worked by the Richmond Dredging Company, the latter part of the work over in San Rafael?

A. It was worked after that by the Richmond Dredging Company; yes.

(Testimony of George Hiram Betts.)

Q. Then when the work started over at Lake Merritt, when she was running, as I understand you from 118 to 130, she was in approximately the same condition that she was when you finished the work [142] for the Richmond Dredging Company over at San Rafael. Do you want it to be understood that way? I want to get the truth, Mr. Betts, I am not trying to get you to say something that you will not.

A. Well, I don't remember in the Lake Merritt job that the engines was—of course, there is times when some mishap happens that will run the speed down so that you will have to shut down them, but there was times in the Lake Merritt job where we run at a very low rate of speed and kept it up.

Q. Were not the engines in approximately the same condition when they were working on the Lake Merritt job that they were when upon the San Rafael job?

A. Well, after they run a certain length of time. When they first went into Lake Merritt they had been under a course of repair work,—at the time they were put in there.

Q. Then they were running better at the commencement of the work at the Lake Merritt job than at the end of the work over at San Rafael?

A. Yes, they were.

Q. Did they run as low as 118 over on the San Rafael work, do you know?

A. Well, it is possible that they did.

Q. Speaking in a general way, the engines were approximately in the same condition at the Lake

(Testimony of George Hiram Betts.)

Merritt work as they were in when the work was being done during the end of the time over at San Rafael, were they not?

A. Well, when I left the dredger in Lake Merritt they were in a run down condition, the same as they were in the San Rafael job; they were in a run down condition then too.

Q. In what respects were the engines in need of repair at the beginning of the Lake Merritt job, do you know?

A. Well, they needed a general overhauling.
[143]

Q. Do you know whether any gaskets were put in over in the repair work at Lake Merritt?

A. At the finish of the job you mean?

Q. No; at the commencement of the job over there, in the Lake Merritt job, while they were undergoing that general overhauling?

A. There was a new set of gaskets during the course of repair when moving the dredger.

Q. How long does a gasket usually last with ordinary wear and tear?

A. Well, we put them in sometimes there, and they would, if there was a defect of the material that you use for gaskets, why it would sometimes go out in an hour or two, or sometimes it would last longer, sometimes it would last a week and sometimes 10 days, and sometimes two weeks.

Q. What is the ordinary life of a good gasket?

A. Well, I should judge two weeks; it depends

(Testimony of George Hiram Betts.)

upon the condition of your engine, the make of your engine.

Q. You say that they went through a general overhauling at the commencement of the Lake Merritt job. Can you remember in detail what was done?

A. Well, the valves were ground, the admission valves were ground, and the exhaust valves were ground.

Q. What else?

A. The batteries were recharged; wiring done for batteries leading to the engine and the exhaust chamber on the engines was refaced, was sent to the Stockton Iron Works and refaced, the face where the metals come up, and there is a gasket separates the two metals; it was refaced so as to give it an even bearing.

Q. What else did they do, Mr. Betts?

A. Then the lost motion in the connection rods was taken up.

Q. Do you remember anything else besides that?

A. And the igniters were overhauled, new points put on them, and the friction [144] clutch had a little overhauling at that time; that is the lost motion was taken up in it.

Q. At the completion of that overhauling, Mr. Betts, were they not in much better condition than they were before?

A. They were in better condition, yes, than they were before, some better.

Q. And did they require anything else than that to put them in good working order and condition for

(Testimony of George Hiram Betts.)

the Lake Merritt job? A. Yes, they did.

Q. What should they have had done to them?

A. Well, the shaft, the crank-shaft, on one engine, could have been rebabbitted.

Q. Was that the crank-shaft that subsequently broke?

A. No, it was not—well, in fact, both of them could have stood being repaired in that way.

Q. How long had the crank-shaft been in that condition before you went over to Lake Merritt?

A. Well, they were in that condition shortly after we started the San Rafael job.

Q. The engines never were powerful enough for that dredge, were they, Mr. Betts?

A. Well, they gave satisfaction at Richmond.

Q. Well, in your opinion, were those engines powerful enough for use on that dredge?

A. Well, it depends upon what you wanted to do with them.

Q. In a general way, the use of a dredger depends very largely upon the condition of the engines, doesn't it, Mr. Betts? A. Yes, it does.

Q. And in running the dredger the man who is working the dredger will pay attention to his engines sooner than he will to anything else, won't he?

A. Well, he has got several things to look after. He has got to work; he can't work in opposition to other men aboard; he has got to look out for his own interest and [145] the other interests too, so as to work in harmony with each other.

Q. Was it not to the interest of the Standard

(Testimony of George Hiram Betts.)

American Dredging Company to keep these engines on the Lake Merritt job in just as good condition as could be in order to do the work that they wanted to do with them?

A. Well, I could not say what they thought about that; I should judge that they aimed to get as much work as they could do.

Q. How old are you, Mr. Betts? A. 30.

Q. How long have you been working as an engineer? A. About six years.

Q. Whereabouts?

A. I have worked in Nevada, British Columbia, this State, Arizona and Old Mexico.

Q. Did you ever work on a dredger before going to work on the "Richmond"?

A. No. This is the first I had worked on, the "Richmond."

Q. How much of the time that you have just mentioned were you working on gas engines?

A. Well, I have put in about six years on gas engines.

Q. Who were your employers in those various places, do you remember?

A. Well, it was mining business; I worked for the Consolidated Mining Company in Goldfield; the Booth Mining Company; in the Copper Queen. I do not remember the company's name in British Columbia. I was with them a short time; and Cannanea, Mexico.

Q. Did you ever work on the Samson gas engine before? A. I never did.

(Testimony of George Hiram Betts.)

Q. How do you think they compare with other gas engines of the same power?

A. Well, I consider the Samson a very good [146] engine as far as power is concerned.

Q. But as to the general set up?

A. There is pretty fair workmanship, I think; pretty well set up engine. I have no fault to find with them.

Q. How many fly-wheels are there on these two gas engines?

A. There was two while they were in operation.

Q. One on each engine? A. Yes.

Q. Were there any rocker arms on them?

A. No, there were not.

Q. You are sure of that, are you, Mr. Betts? I understood that to be the fact. I want to be sure whether there were none?

A. Well, there was rocker-arms on the shaft operating the valves, that opens and closes the valves.

Q. Are you sure of that, Mr. Betts?

A. Well, yes, I am sure of it.

Q. You said that there were five engineers working on the dredge and two of them were competent men you thought. Did you mean two besides yourself?

A. No, I meant the two that was employed at opposite shifts to me.

Q. In other words, there were three of you who were competent men and two in your opinion incompetent?

A. Well, as near as I can remember, there was

(Testimony of George Hiram Betts.)
five men employed outside of myself.

Q. There were six of you altogether?

A. As near as I can remember. I would not say for certain. Now, there was one there that was only there a short time.

Q. Can you give the name of one of those engineers working on the shift opposite to yourself?

A. Well, there was one fellow by the name of Darms.

Q. In your opinion was he a competent man or incompetent? A. He was not a competent man.

[147]

Q. Can you give the name of any other one?

A. I can't think of his name; if I saw him I would know him.

Q. How long did Darms stay there?

A. Well, he was not there very long. I do not remember the exact time, but it was a short time; it was about a month.

Q. Do you know why he left? A. What is that?

Q. Do you know why he left?

A. He did not leave the dredging company; he changed from that job to another one.

Q. You can't recollect the name of any other of the men? A. I don't remember any.

Q. How did these men work on the shifts? You work 6 hours and then one of the other men?

A. No; worked 12 hours straight.

Q. Worked 12 hours straight.

A. Yes, a half of the 24 hours; I stayed one half and they the other.

(Testimony of George Hiram Betts.)

Q. You do not mean that these five men were working on the dredger at the same time, do you?

A. No; at different times.

Q. At different times. A. Yes, sir.

Q. And that extended only during the period that you were at work over at Lake Merritt?

A. Yes, sir.

Q. Did you complain about any of those men for incompetency to the captain? A. I did.

Q. What did the captain do about it?

A. Well, he got another man when he found one, I suppose.

Q. He left them go as quick as he could after you told him they were incompetent?

A. He let one man go, to my knowledge, as soon as possible, in a day or so, I should judge, or about that time.

Q. Was the captain on the dredge?

A. Well, when they first [148] started in, why, I understood a man by the name of Anderson had charge, and then Mr. Johnson, and after that Mr. Knight.

Q. Were all three of those men in charge during the time the dredger was at work at Lake Merritt, one after another? A. Well, I suppose they were.

Q. What was the diameter of the discharge pipe on the Lake Merritt job?

A. Why, 12 inches, I suppose.

Q. Do you know the minimum length of discharge line while you were working on the Lake Merritt job? A. No, I do not.

(Testimony of George Hiram Betts.)

Q. You do not know the average length of pipe line?

A. Well, I could not say any more than make a guess at it.

Q. Well, would that guess be based upon what you think was the length? A. Well, I don't know.

Q. You don't know the maximum length of the pipe, do you? A. No, I do not.

Q. Do you remember what was the minimum vacuum on suction?

A. Well, I had no occasion to keep track of that. Of course the vacuum gauge and the pressure gauge on the pump is located in the leverman's room outside from the engine-room.

Q. Then you do not know anything about the vacuum?

A. I had no occasion to look after that any way; that was not included in my part of the work.

Q. Do you know anything about the capacity of the dredger as to the cubic yards per hour during the Lake Merritt job? A. No, sir, I do not.

Q. What kind of material was it that was handled at Lake Merritt, I withdraw that. What kind of material was it that was handled at Richmond, while you were working over at Richmond?

A. Well, I should judge it was pretty heavy material. [149]

Q. What was the substance, clay, gravel or sand?

A. Well, there was times when they had a little sand, a little gravel and clay, I suppose, but it was classed as clay—I would not say for certain.

(Testimony of George Hiram Betts.)

Q. What was it up at San Rafael?

A. Well, it was pretty soft material, a good deal of it; and some of it was, I should say, a little heavy.

Q. Any gravel up there?

A. Yes, there was some.

Q. About the same character of material that was over at Lake Merritt?

A. No, I would not think so.

Q. Well, what was the difference?

A. I should think the Lake Merritt was softer material.

Q. What was it at San Rafael, clay, gravel or mud and sand?

A. Well, I could not say. It was, I judge—there was some clay, some sand and gravel mixed; a soft material in general.

Q. Do you remember when you first went to work on the "Richmond," the date?

A. I do not remember the exact date.

Q. Approximately?

A. Well, it was somewhere near three years I think.

Q. In what capacity did you work for them first?

A. I was hired as an engineer, but it seemed there was some misunderstanding; there was one man that they had who took the engines and I took his place on the firing.

Q. How long did you work there, firing?

A. I was about a month I guess, and then I went on the engines.

Q. Do you remember the name of the engineer who

(Testimony of George Hiram Betts.)

was at work there when you went on as fireman?

A. His name was Wheatley I think.

Q. Do you know whether he was a competent man?

A. Well, I would not judge that he was.

Q. Do you know why he left the employ of the Richmond Dredging [150] Company?

A. Why, there was a little mishap occurred on the engines, and he did not know how to overcome it.

Q. What was it, do you remember, Mr. Betts?

A. There was a gasket got blown out on the cylinder, and it leaked water into the cylinder, and he tried to start the engine up, and of course it destroyed the mixture from one cylinder into the other, and it dampened the inside of the engine, the igniter, so that he could not get it to start up, and of course he got tangled up, could not start up the engine, and I do not know whether he quit or how it happened, I know he left.

Q. Do you know whether either of the engines was damaged at that time?

A. No, they were not damaged at that time, because it was repaired immediately afterwards. He worked all day on it, very near all day, and I repaired the engine, had them in running order in about 20 minutes.

Q. Did you have any personal trouble with Wheatley at all? A. No, I did not.

Q. Didn't he accuse you of tampering with the engines so that he would have difficulty in starting them and keep them going?

A. Well, I believe he did make some remark; I

(Testimony of George Hiram Betts.)

could not say about it.

Q. While you were working after that, after Wheatley left, did you have any trouble with the engines at all?

A. I did not; I had no trouble at all.

Q. Didn't you have some trouble with them stopping?

A. Not any more than the common occurrence with all gas engines.

Q. Did you have any less trouble than you had with them later over at San Rafael?

A. Why, I had less trouble with them in Richmond than I did in San Rafael. I had a good deal of trouble in San Rafael. [151]

Q. Didn't you have the same trouble with them at San Rafael that you had later when you were working at Lake Merritt?

A. Well, yes, similar to it, in a way.

Q. Do you remember well enough to state what average delay you had a day over at San Rafael?

A. I could not say for certain; I never made any report of the delays.

Q. Didn't you make reports of delays while you were working for the Standard American Dredging Company after you had been working for the Richmond Dredging Company?

A. No, I never did. The reports was all done by someone else, if they were done at all.

Q. What was the most prolific cause of trouble with the engines at San Rafael?

A. Well, the San Rafael job, that work, the en-

(Testimony of George Hiram Betts.)

gine was pretty badly neglected all over. The men that they had on it was incompetent, some of them were, and they neglected doing a lot of repair work that should have been done, grinding valves—of course, generally Sundays, there would be no work Sundays excepting repairing the machines during the Sunday, and we would do the repair work, and of course if we could not get the repair work finished Sunday, why, Monday we had to start up, or when we started up—

Q. That was the real cause of the condition of the engines when you went over to Lake Merritt, was it, the neglect that the engines had had given them?

A. No, I do not think it was.

Q. Don't you? Well, that neglect of the engines, you say, was the reason for their condition—was it not, Mr. Betts?

A. Well, the neglect in Lake Merritt—

Q. I asked you about San Rafael, Mr. Betts. They were in that same condition at San Rafael?

Mr. TAUGHER.—Do you mean at San Rafael before or after the [152] Standard American Dredging Company used it for a while.

Mr. LILLICK.—I mean at San Rafael, Mr. Tauger, I am not talking to you.

Mr. TAUGHER.—Let us get it straight, so that the witness will understand it.

Mr. LILLICK.—Read the question to the *question*, Mr. Reporter.

(The last question repeated by the Reporter.)

Mr. TAUGHER.—If he has a correct knowledge

(Testimony of George Hiram Betts.)

of the situation, he can answer it.

A. In my answer—

Mr. LILLICK.—Q. Go on. I only want the truth; I only want the actual facts of this case; that is all.

A. I do not understand which I am answering, which job.

Mr. LILLICK.—Q. As I understood you, Mr. Betts, you said that Mr. Wheatley at one time had had some trouble with the engines, and he could not do anything with them, that you repaired them, and then you went on and detailed work over at San Rafael, and then afterwards the dredge was taken over to Lake Merritt. I asked you the condition of the engines over at San Rafael, and you said that they were in pretty bad condition, and they needed repairs, and that you worked on them on Sundays, when the dredge was shut down, and I understand the dredge was never shut down at Lake Merritt on Sundays, and I understood you were talking about the San Rafael job; were you not talking about the San Rafael job?

A. Well, yes.

Q. As a matter of fact, Mr. Betts, the engines were really in approximately the same condition over at Lake Merritt as they were at San Rafael, were they not—except for repairs that were made upon them at the commencement of the job at Lake Merritt?

[153]

A. Yes, of course, the repairs that was necessary in San Rafael was altogether different from what was necessary in Lake Merritt; different altogether they were.

(Testimony of George Hiram Betts.)

Q. What were the repairs over at San Rafael?

A. Well, I don't remember all the repairing that was done; of course, there was more or less repair work done, and more or less left undone.

Q. And the condition was the same not only during the time the Standard American Dredging Company was working at San Rafael but afterwards when the Richmond Dredging Company was working at San Rafael, was it not? A. What is that?

Q. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. No, sir. Mr. Cutting, when he took charge of it, he put in a good deal of repair work, because we had to do it in order to get any work out of it.

Q. Then the engines were in poor condition before that, were they not? A. They were, yes.

Q. Were the mechanical lifts or the intakes to the cylinders taken off the Samson engines?

A. Yes, they were.

Q. Who took them off, do you remember, during the time over at San Rafael?

A. I don't remember them being taken off over there.

Q. Where were they taken off, Mr. Betts, do you remember?

A. It seems to me they was taken off when moving into Lake Merritt.

Q. Do you know why they were taken off?

A. Why, to take up the lost motion, to repair them, so that there would be no lost motion to them and put them in better running order.

(Testimony of George Hiram Betts.)

Q. Were they put on again after they had been taken off, do you remember, Mr. Betts? [154]

A. Well, the mechanical admissions was never used on them engines during my time on her.

Q. Why not, Mr. Betts?

A. I don't know the reason why they was taken off or why; they never was used on them in my time.

Q. What would be the effect of using them?

A. They use it as an automatic admission by taking them off—they had to work automatic.

Q. Well, previous to the time they were taken off and while you were working for the Richmond Dredging Company, they were not used any?

A. No, I don't remember of them being ever used, not during my time; they never was used during my time on the dredge.

Q. Do you know what the horse-power of the Samson engine was, what horse-power the Samson engines were supposed to develop?

A. They are supposed to develop 150.

Q. Do you know whether they ever did develop that much power over on the San Rafael job, either while you were working for the Richmond Dredging Company or the Standard American Dredging Company?

A. I could not say, because I have no way of telling. I had no way of testing them.

Q. Except by the revolutions—you know how many revolutions they were making? A. Yes.

Q. How many revolutions did they have to make to develop 150?

(Testimony of George Hiram Betts.)

A. 150 is supposed to be 150 revolutions.

Q. 150 revolutions would develop 150 horse-power?

A. It is supposed to. That is the way it was put up to me. I never tested the engines or had anything to do about finding out the horse-power of the engines under any condition.

Q. Do you know whether they ever did run 150 revolutions a minute on the San Rafael job?

A. Yes. [155]

Q. Either while you were working for the Standard American Dredging Company or the Richmond Dredging Company?

A. They run 150 on the San Rafael job.

Q. On both jobs, while you were working for the Richmond Dredging Company as well as while you were working for the Standard American Dredging Company? A. Yes, they did.

Q. Did they all the time, Mr. Betts?

A. No, they did not run all the time 150.

Q. What part of the time did they run 150?

A. When we first started in the San Rafael job, according to my idea of it, they gave good service.

Q. I am only asking with reference to the number of revolutions?

A. Well, yes, they run up to the regular speed, sometimes; I do not remember how long it was, about three weeks, I guess, or something like that—then they showed signs of failing a little.

Q. You did have means of testing how many revolutions it was going a minute, didn't you?

(Testimony of George Hiram Betts.)

A. Yes, sir.

Q. And you know as a matter of fact they ran 150 revolutions a minute? A. Yes, they did it.

Q. Did they do any more than that at any of the times over there, do you know?

A. Well, at times it will increase the speed, when the load on the pump drops off sudden, why the engines has a tendency to.

Q. Then it runs away with itself?

A. It will do it.

Q. But while you were working with the pump full the fastest it ever went was 150?

A. Well, 155—if it happened to go to 155 it was doing good work.

Q. Do you know what condition the engines were in at the time the [156] dredger was turned over to the Standard American Dredging Company after the Richmond people had done the small job at San Rafael?

A. Well, it would have stood repair work at that time.

Q. They were in the condition, really, were they not, then that they were when the dredge was being moved from the estuary in Oakland over to Lake Merritt, when all this overhauling was done?

Mr. TAUGHER.—Look at the time between those two places.

Mr. LILLICK.—Q. You just answer the question. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

(Testimony of George Hiram Betts.)

A. Well, there was a difference in the condition of them.

Q. Why, Mr. Betts?

A. Because when they done this small job in San Rafael they had to do the repair work on it to do the job.

Q. Then they did some repair work, finished the job, and the dredger was moved, as I understand, to the estuary in Oakland, and then overhauled by the Standard American Dredging Company while it was being moved to Lake Merritt?

A. While it was being moved into Lake Merritt.

Q. They were not in a condition to be run and obtain proper results, were they, before the work was commenced at Lake Merritt without doing this repairing? A. No, they needed repairing.

Q. Who did the repairing at the time, do you know?

A. Why, they had a man there from the Samson Iron Works at Stockton.

Q. They were the people that built the engines in the first place, were they not? A. Yes, sir.

Q. Did you assist in making those repairs?

A. I did.

Q. While you were on the "Richmond" with the Standard American Dredging Company running the engines, you were always furnished with the parts that you asked for, were you not, for your repairs?

[157] A. Why, yes.

Q. The company always repaired the engines and

(Testimony of George Hiram Betts.)

furnished you not only material but men to do the repair work whenever you asked them? A. Oh, yes.

Q. Did it not? A. They furnished everything.

Q. Do you remember the time when the Standard American Dredging Company installed a steam engine to drive the cutter—do you know when it was?

A. I do not know the date.

Q. Did it take any of the work off the Samson engines? A. Did it take any work off them?

Q. Yes. A. It did relieve the engines.

Q. What proportion, in your opinion, of the power of the Samson engines did the cutter take before this steam engine was put on to drive it?

A. I could not say, because—

Q. It made quite a difference, didn't it?

A. It made some difference.

Q. Do you remember the length of the discharge line while you were working over in Richmond for the Richmond Dredging Company?

A. I could not say for certain.

Q. Half a mile?

A. Well, I guess there was; I don't know whether it was for certain that long; it might have been that long at times. I could not say for certain the length of it.

Q. You remember the work at the canal and the fill that was made behind the shop over there, don't you? A. Yes, I remember that.

Q. How long do you think the average length of the discharge pipe was there?

A. 1,000 or 2,000 feet. I don't know the length of

(Testimony of George Hiram Betts.)

it. I had no occasion to find out, or to know anything about that, because that was entirely separate from my work.

Q. Outside your work?

A. I had nothing to do with that part.

Q. Going over to the Lake Merritt job, do you remember approximately [158] how far away the booster was on the discharge pipe?

A. I do not remember them having a booster in the San Rafael job.

Q. The Lake Merritt job.

A. Well, they had the booster at different distances away from the dredger, a number of different times; it was not at the same distance all the time, it was shifted.

Q. That depended upon the character of the material they were pumping?

A. I don't know about that. I don't know why, what their reasons were; they never mentioned it to me.

Q. Was this booster pump any aid to the engines?

A. Well, in order for me to answer that question I would have to be posted on the vacuum pressure and the pump that was on the dredger, and as I said before, I had nothing to do with that part of it at all.

Q. Didn't they work the dredge on the Lake Merritt job at first without a booster, while they were doing filling close in to the shore?

A. They did, yes.

Q. Did you notice any difference after the booster was put on, as to the revolutions of the engines?

(Testimony of George Hiram Betts.)

A. There was a difference at times; when the booster would be moved, sometimes it would be closer by and sometimes it would be quite a distance away.

Q. The effect of the booster, however, was to relieve the strain on the gas engines, was it not?

A. Well, I should judge that was why it was put in there for.

Q. The engines would not have done the same amount of work if the booster had been taken off entirely? A. I would not say so.

Q. Do you know the horse-power that the booster pump had? A. No, I do not. [159]

Q. Mr. Betts, do you remember telling Mr. Gustavson on the dredger "Richmond" some time in May of this year that the Samson engines were no good and never were any good and never had enough power to run the dredge?

A. No, I do not remember anything like that.

Q. You do not remember saying anything like that? A. I do not.

Q. Do you remember telling Mr. Isaacson at San Rafael it was the last work you would do on the dredge "Richmond" with the insufficient power it had on, and that the dredger ought to have 2,000 horse-power?

A. I don't remember any statement of that kind at all.

Q. Would you say 200 instead of 2,000?

A. I don't remember anything like that.

Q. Do you remember any conversation you had

(Testimony of George Hiram Betts.)
with Mr. Isaacson about it at all?

A. Well, I remember talking about one thing and another.

Q. But I mean as to the horse-power of Samson engines?

A. No, I do not know as I ever mentioned to him about the power of the engines, or anything of that kind.

Q. You do not remember saying anything to him about the engines being insufficient in power to do the work on the dredger. I do not mean the conversation itself, I mean just any recollection you have of any conversation you had with Isaacson.

A. I never mentioned to him anything about the machine being insufficient.

Q. What did you say about it, if you remember? Do you remember saying anything to him about it at all? A. No, I do not.

Q. While you were working for the Richmond Dredging Company before you went on to the Standard American Dredging Company did you ever have the bearings in the engines get hot?

A. Before it [160] went into San Rafael?

Q. Yes.

A. Yes, I recollect the connection rod getting warmed up.

Q. Do you know whether that affected the crank-shafts and bearings in any way?

A. No, it did not.

Q. What do you think the effect of a cut of a one thirty-second of an inch in depth on the crank-

(Testimony of George Hiram Betts.)

shaft would have as to the efficiency of the shaft?

A. A cut in what part of the crank-shaft?

Q. Any portion of the crank-shaft, opposite the bearings upon which the shaft would work, one thirty-second of an inch in depth. Do you think that would affect the crank shaft in any way?

A. Well, it depends upon what part of the crank-shaft it would be on.

Q. Well, what portion of the crankshaft would it have the most effect in?

A. Well, it would have the most effect on the part that had the greatest strain.

Q. Well now, what would be the effect on the crank-shaft at a point where the greatest strain would be put on of a cut one thirty-second of an inch in depth? Would it have any at all?

A. Well, yes, certainly it would have something to do, I should judge it would. It would have a tendency to weaken that part that much, whatever strength there would be in that much material.

Q. It would depend entirely on the width of the cut. You don't know whether you ever run an engine with that kind of a cut on it, Mr. Betts?

A. I do not understand what you are referring to.

Q. A cut upon a crank-shaft one thirty-second of an inch in depth, and the effect that would have upon the shaft itself, with reference to its doing work and with reference to its weakening the crank-shaft [161] Do you think it would be of any importance at all, even at a point where the greatest strain would come on the crank-shaft?

(Testimony of George Hiram Betts.)

A. If the cut would not be, if it would not interfere in any of the bearings or any wearing surfaces, and the shaft was made strong enough to stand the strain, with a surplus amount of it, why, I should judge it would not affect the shaft any.

Q. You know the size of these crank-shafts on the Samson engines, don't you, in a general way?

A. No, I don't know the correct size of them.

Q. Why, you know in a general way how big they are, don't you, Mr. Betts?

A. Well, I have got an idea about the size of them.

Q. Do you think a cut one thirty-second of an inch in depth on either one of those crank-shafts would affect the strength of the shaft any? I want your best opinion about that.

A. Yes, I think it will affect it. I would not want to do it to an engine of mine.

Q. Do you know anything about the effect on the bearings and the crank-shaft after such a cutting, if the shaft is kept properly oiled? If you do not know anything about it, simply say so. Answer the question.

A. Well, you will not explain to me so that I can understand what you mean; I do not understand what you are referring to.

Q. On a crank-shaft where the greatest strain is on, where there is a cut one thirty-second of an inch in depth, and the shaft is kept properly oiled, do you think the shaft would get any worse by reason of the cut,—subject to ordinary use, I mean.

A. Well, yes, I think—I do not see why that one

(Testimony of George Hiram Betts.)

thirty-second of an inch of a cut should be made, nor what benefit it is going to do. [162]

Q. Yes; but if there is such a cut in a crank-shaft and the shaft is kept properly oiled, and that cut is at a part where the greatest strain comes on the crank-shaft, would it in any way interfere with the working of the crank-shaft or its strength?

A. Yes; I should consider that it would weaken the crank-shaft.

Q. Just that much?

A. Just that much. If the crank-shaft is, to say, for instance, 5 inches in diameter, and it takes 10,000 pounds of breaking test to break it, if you reduce the size of the shaft one thirty-second of an inch it reduces the strength of it that much. That is the only thing I can say.

Q. While you were working at San Rafael did you ever drain the water out of the cylinder jackets?

A. Yes.

Q. Why?

A. In order to see there was no place stopped up. You see there is always sediment collects under the jackets, and in order to see that they were free, why, we drain the water out once in a while.

Q. You had no other object in doing that over there, did you?

A. Only to dry it out, so as to, in changing the gasket or something or other, taking the water out of the head of the cylinder will naturally dry the moisture out while you are doing the repair work.

Q. What do you think, Mr. Betts, would be the

(Testimony of George Hiram Betts.)

effect of overloading a gas engine?

A. Well, overloading reduces the speed and has a tendency to put greater strain on the bearings.

Q. Just slows the engine down?

A. Slows the engine down, so that it won't run to its regular speed.

Q. If you slow the engine down, does it decrease the horse-power any? A. Yes, it does.

Q. The horse-power on engines of that character is developed [163] as the speed of the engine develops? A. Yes.

Q. Is it any more of a strain on a gas engine built to develop 150 horse-power to develop only 120 horse-power?

A. Well, an engine that is built for 150 horse-power will handle a 120 horse-power load easier than it will handle 150.

Q. No more strain on it, and it leaves just that much more in the engine, does it not?

A. It leaves that surplus power in the engine.

Q. Do you think it would be necessary if a crank shaft such as these crank shafts were had a cut of one thirty-second of an inch in diameter on the journal to take out the crank shaft and send it to the shop and have it turned out?

A. Do I think it would be necessary?

Q. Yes.

A. Well, it might be the only way out of the difficulty, if your shaft was worn out—

Q. I am only speaking of a one thirty-second of an inch.

(Testimony of George Hiram Betts.)

A. If the shaft was worn so that it was necessary to take it, it would be the only way out of it.

Q. But then that would only be where that cut was a one thirty-second of an inch all the way around the shaft during the entire width of the journal, would it not, Mr. Betts? A. Yes.

Mr. TAUGHER.—I would like to enter a protest against this useless and long drawn out examination which does not lead any place but just makes expense and unduly overloading this record.

Mr. LILLICK.—Q. Mr. Betts, if you were using a crank shaft like this on the Samson engines, and there was a cut one thirty-second of an inch in depth in the journal of the crank shafts, and you put lubricating oil in, would not the engine run just as [164] well without any damage to the engine? In your opinion?

A. Well, the engine might run just as well, provided it is not overloaded.

Q. Can you get any compression on a gas engine when the exhaust valves are all worn out?

A. Well, it depends upon the speed that you are running them; if you have one cylinder that has a bad leaking exhaust valve, you can get some compression, but when they are worn, of course you lose your compression; they might be in a condition where you could not get any compression, and in that respect you could not start your engine.

Q. And if the valves were all worn out there would not be any compression and you could not start the engine, could you? A. No, sir.

(Testimony of George Hiram Betts.)

Q. If you had the crank shaft out of the engine bed, would it be difficult to renew the fly-wheels?

A. To renew them?

Q. Yes, put on new ones.

A. Well, no. Of course they would have to be fitted; the only difficulty would be they would have to be fitted to the crank shaft, provided you used the old crank shaft.

Q. Do you remember what the condition of the water outlet was on top of the cylinder heads when you commenced work over at Lake Merritt after you had repaired the dredger?

A. Well, they were not in very good condition, that part of it.

Q. Do you know whether they were rusted away around that outlet?

A. Well, they were rusted quite a bit.

Q. Is there more than one outlet?

A. Yes, there is six outlets, one for each cylinder, and it runs into a manifold of three, and it has the two manifolds and they are connected into one pipe, discharges out through one pipe. [165]

Q. What pump supplies the circulating water to the gas engine?

A. It is a pump, I think—it is a valve pump located behind the boiler in the fireroom.

Q. What kind of water did you use, salt or fresh?

A. Salt water.

Q. Was there fresh water suction to that pump, do you know?

A. Not to my knowledge; I don't think there was.

(Testimony of George Hiram Betts.)

Q. You would have had to make changes to put fresh water suction on the pump, wouldn't you?

A. Yes, you would.

Q. What effect has salt water on cast iron when the temperature is raised by the heat of the cylinders, do you know?

A. Well, it has a tendency to leave more of a deposit of salt and sediment in the cylinder and jackets.

Q. Would they be liable to rust?

A. Well, they are liable to rust, yes.

Q. Would the inside of the water jackets and the cylinder and the cylinder heads rust if they were not kept air-tight? A. The inside of the jackets?

Q. Yes.

A. They would rust where the salt water comes in contact with it.

Q. Whether they are kept air-tight or not?

A. Well, your engine isn't in running order unless it is air-tight.

Q. Then they would rust whether it was air-tight or not, you think?

A. Why, certainly, they would rust.

Q. Did you during your service as engineer on the dredger have to take up and refit the crank and piston brasses several times? A. Yes, that was done.

Q. That is not a very long job, is it?

A. Not so very.

Q. How many hours did you take, you and a good man to help you? [166]

A. I could go over the one engine, that is, three cylinders, three crank brasses and three crosshead

(Testimony of George Hiram Betts.)

brasses, generally do it in about a day's time.

Q. How long would it take you, you and another good man, to take apart or knock down the two engines? A. To take the entire engine apart?

Q. Yes.

A. Well, that depends upon the condition of it.

Q. If you had them in a machine shop with all the necessary tools?

A. Well, it depends upon the condition of the engine. If everything is rusted tight it requires more work. I could not say the exact time it would take.

Q. About how long do you think?

A. Well, there is a good many pieces to be taken apart; I could not—

Q. Do you think it would take more than two or three days?

A. Yes, it would take all of that; four or five days.

Q. How long would it take you to set them up again?

A. Well, I could not say for that. When you are setting up an engine you have to adjust everything to running order, and that takes time.

Q. When you left the "Richmond" were the fly-wheels worn out, Mr. Betts?

A. When I left the "Richmond"?

Q. Yes. A. Yes, they were in bad condition.

Q. Where?

A. On the crank shaft where the key seat were was in poor condition.

Q. Just at that key seat?

A. They were worn so that the fly-wheel was loose

(Testimony of George Hiram Betts.)
from the crank shaft.

Q. But then that was only there at the key seat, where you have described?

A. They were worn both on the key seat and on the shaft too.

Q. Do you think it is necessary to install new fly-wheels on [167] account of that?

A. Well, in order to have it as good as new, you would have to replace them.

Q. But I am speaking of ordinary repair, Mr. Betts. They could have been repaired without putting in a new wheel on either one of the engines, couldn't they?

A. Well, there possibly could be a way of doing it.

Q. How many studs do you think were loose on the Samson engines when you left them over there?

A. I could not say for certain how many.

Redirect Examination.

Mr. TAUGHER.—Q. In what shape were those engines when they finished at Richmond before going into San Rafael?

A. They were in good condition. They had been under a course of repair work and they had been put in good running condition.

Q. Have you seen the engines since they were put back, reinstalled on the dredger—that is, at any time since the 3d of February of this year?

Mr. SPILMAN.—We object to that upon the ground it is not redirect examination.

Mr. TAUGHER.—Q. Have you seen those en-

(Testimony of H. C. Cutting.)
gines? A. Yes, I have.

(An adjournment was here taken until Tuesday, October 17th, 1911, at 10 A. M.) [168]

Tuesday, October 17th, 1911.

[**Testimony of H. C. Cutting, for Libelant.**]

H. C. CUTTING, direct examination resumed.

Mr. TAUGHER.—Q. What did you figure you were getting a month for the "Richmond No. 1" on the Lake Merritt job? A. About \$2,000 a month.

Q. Would you say that \$2,000 was an excessive or moderate rent for the "Richmond No. 1"?

A. It is not an excessive rent; a very moderate rent. If you have use for a dredger, it is worth a good deal more than that.

Q. What was the rent reserved in the last two charter-parties?

A. The rent of the charter-party of October 18, I think is the date, was fixed at \$800 a month, but that was fixed at that rate because Perry and I had been very friendly, and had talked over many times his doing a lot of dredging for me out at Richmond, and he said he lost money on the Lake Merritt job, which, of course, I did not care much about that, because he expected to lose money when he took the job, but he said that he only wanted the dredger for three months up there, and that the stuff to be dredged was very soft, would not wear the pipes, and it was more a matter of friendly relation than it was a business proposition, letting him take the dredger up to Eureka.

Q. Now, you say that he knew he was going to lose money on the Lake Merritt job. What did you mean by that statement?

A. Well, because when I met Perry over at Oakland at the corner of 14th and Broadway, the day the bids were put in on that Lake Merritt job, and I told him I was going to put in a bid, and he says, "Well, I am going to get that job." I says, "Why, how do you know you are?" "Well, because," he says, "I am going to take [169] it at a price that nobody can afford to do it at; these fellows are getting too funny around here and I am just going to teach them to keep off of my dunghill."

Mr. LILLICK.—I ask that the answer be stricken out as not an answer to the question, and also as immaterial, irrelevant and incompetent.

A. (Contg.) And he said that—I told him how much I was going to bid, and during the conversation I says, "Well, I do not see how you are going to do the job, because I only know of one dredger than can do the job, and that is the 'Richmond.'" I says, "The rest of these things around here you could not move them into the lake," and he says, "Well, that is the dredger I am going to do the job with," and we laughed about it, and the result was, it resulted in our making a temporary charter-party right there on two little slips of paper; he wrote it out himself and wrote out a copy for me and we both signed it; and then afterwards that mutual agreement was confirmed in the charter-party of February 10, 1909. I know he was going to lose money on the job because

(Testimony of H. C. Cutting.)

he told me plainly that he took the job just to keep somebody else from getting it.

Mr. LILLICK.—We ask that the answer be stricken out as immaterial, irrelevant and incompetent, and having nothing to do with the issues in this case; that as to the temporary charter-party that was entered into, if any was, that the writing would be the best evidence of its contents; and further that it was merged in the charter-party after it was written.

Mr. TAUGHER.—Q. Would the Richmond Dredging Company have rented the dredger "Richmond No. 1" to any one other than the Standard American Dredging Company for \$800 a month at the time [170] that charter-party of October 18, 1909, was made? A. It certainly would not.

Q. What induced the Richmond Dredging Company to rent it to the Standard American Dredging Company at that price at that time?

Mr. LILLICK.—I object to that as irrelevant and immaterial.

A. Well, as I said, Perry and I had had numerous conversations about his doing a lot of dredging for me over there at Richmond.

Mr. TAUGHER.—Q. About how much?

A. Oh, there was—I had anticipated \$150,000 worth of dredging over there, and we had talked that over pro and con. He had tried a good many times to buy the dredger and take it out in dredging. I had told him that I had built the dredger to do my work, and I really did not intend to butt into the

(Testimony of H. C. Cutting.)

dredging game, and he tried to trade me out of the dredger a good many times, and I had always told him that I thought we could make some arrangement, and we had talked over several propositions whereby he would do a certain amount of dredging and he would take the "Richmond No. 1" in part payment and take some cash and some land in payment for the work, and all these things were in contemplation, and our relationship was most friendly, and he says, "Here, now, I have lost a bunch of money on this Lake Merritt job and you fellows ought to give me a chance to make a few dollars on this little job up at Eureka, and if we are not through with the dredger when you want one, why, you can take the 'Oakland,'" and he told about how much the "Oakland" could do over there, and how much better it would be to use the "Oakland" over there than it would the "Richmond." And of course I believed it, very much to my sorrow afterwards.

Mr. LILLICK.—I ask that all that be stricken out on the ground it is irrelevant, and on the ground that any preliminary negotiations [171] or conversation held between Mr. Cutting and Mr. Perry were merged subsequently in the charter-party.

Mr. TAUGHER.—Q. When did the Richmond Dredging Company deliver possession of the "Richmond No. 1" to the Standard American Dredging Company?

A. You mean the last time we delivered possession?

(Testimony of H. C. Cutting.)

Q. Yes.

A. Well, it was about the time the charter-party of February 10, 1909, was made.

Q. Has the Richmond Dredging Company ever had possession of the dredger since that time?

A. It never has.

Q. The Standard American Dredging Company has never returned her to the Richmond Dredging Company?

A. The Standard American Dredging Company has never returned the dredger "Richmond No. 1" to us since February 10, 1909.

Q. Did you cause a demand to be made on the Standard American Dredging Company for the return of the "Richmond No. 1" prior to the expiration of the charter-party of October 18, 1909? A. Yes.

Q. Or a notice to the effect that you would require that to be returned on the termination of that charter-party?

A. Oh, I had two or three conversations about that. Along in the first part of December, 1909, we told Mr. Perry we had settled all the terms with the Santa Fe, and were just about to sign up the contract with them, and that they wanted us to start work right away, and that we must have the dredger on January 20, when his charter-party would expire.

Q. What year was that?

A. 1909, in December. We had several conversations with him along in November and December, because Perry knew just as much about that Santa Fe contract and the [172] contract with the city of

(Testimony of H. C. Cutting.)

Richmond and the work we were to do over there at Richmond—he knew just as much about it as we did, because he bid on the work himself and tried to take it away from us, but there was no chance of his doing that.

Q. Did you cause a notice to be served or delivered to the Standard American Dredging Company subsequently to December, 1909, that you would require the dredger on the termination of the charter-party of October 18th, 1909?

A. Well, during the course of these conversations Perry said that he was not through with his contract up there, and said that we knew very well he could not pull the dredger off of there, he did not have anything to take its place, and he had just got things in shape to make some money, and he did not want us to demand the return of the boat; and so he really talked us into accepting the "Oakland" so as to allow him to keep the "Richmond" up there on that Eureka job.

Q. Did you intend to use the "Oakland" on the Santa Fe job and the city of Richmond job?

A. No, I did not intend to use it.

Q. Use the "Richmond"?

A. I intended to use the "Richmond," yes. I did not intend to use the "Oakland" because Plummer, who was the engineer in charge of the work of building the "Richmond" and who also built the "Oakland" had told me two or three times that the "Oakland" was a fine machine in soft mud, but she was not any good in hard material, and I knew the stuff

(Testimony of H. C. Cutting.)

up at Richmond was quite hard material; and so I was really afraid to tackle the "Oakland" on that job, but Perry said he had made a number of improvements in it and fixed it up, and assured me that the dredger would handle the work cheaper than the "Richmond" would, [173] and that she could pump the whole distance without a booster.

Mr. LILLICK.—We ask that the answer be stricken out on the ground that it is irrelevant; it is attempting to explain the terms of a contract entered into, and it is immaterial for that purpose.

The WITNESS.—I am just giving the conditions under which the charter-party was made, that is all. I am trying to place the whole proposition before you just as it happened.

Mr. LILLICK.—We ask that all of that be stricken out.

Mr. TAUGHER.—Q. Can you state why that charter-party then of February 26, 1910, was made, if it was?

Mr. LILLICK.—Objected to as immaterial, irrelevant and incompetent.

A. Well, it was made as an accommodation to Mr. Perry, that we took the "Oakland" and allow him to keep the "Richmond" so that he could finish his contract up at Eureka.

Mr. TAUGHER.—Q. Who prepared the charter-party of February 26, 1910?

A. It was prepared by the Standard American Dredging Company.

(Testimony of H. C. Cutting.)

Q. Did they send you a draft of that charter-party?

A. The first draft of it Cummins brought over to the office and, well to express it in the vernacular; they were trying to hand me a lemon, and I did not hesitate to tell Cummins so. I told him, I says, "You have got a nerve to bring around anything like this expecting me to sign it," and I says, "You know very well that I have got work to do up there, and I have got to have a dredger," and I says, "If you don't want me to take that 'Oakland' on a proper charter-party, why, just bring back the 'Richmond' because," [174] I says, "we are not anxious to have your 'Oakland' anyway; we much prefer to have the 'Richmond.' "

Mr. LILLICK.—We ask that the answer be stricken out as irrelevant and immaterial.

A. (Contg.) And so I told Cummins at the time, I says, "There is one thing that has got to be absolutely certain in that, and that is that we must have a dredger until we have done all the work that we want to do at Richmond, and," I says, "this charter-party has got to say that we can have the 'Oakland' or the 'Richmond.' "

Mr. TAUGHER.—Q. Was the charter-party modified to meet your views in that regard?

A. It was very much modified.

Q. Did the charter-party, in your opinion, make it certain that you would have either the "Oakland" or the "Richmond" to complete your contracts at Richmond?

(Testimony of H. C. Cutting.)

Mr. LILLICK.—We object to the question on the ground that it is irrelevant and immaterial as to what Mr. Cutting imagines the contract contained; the contract speaks for itself and is the best evidence.

A. Well, I certainly understood that the charter-party meant that we were to have the "Oakland" for 60 days sure, and that any time after that, if they wanted to take the "Oakland" away from us, they must return the "Richmond" before the "Oakland" was taken away, or immediately it was taken away. That was why I understood it and the reason why the 400,000 was put in there was because—

Mr. LILLICK.—I object to that on the ground that it is immaterial. [175]

A. (Contg.) That was at their dictation, because they were afraid we might undertake some big job with the "Oakland."

Mr. LILLICK.—We ask that that be stricken out as a conclusion of Mr. Cutting's.

A. (Contg.) There was no conclusion; it was all talked over, thoroughly understood. There was no conclusion about it. It was talked over in plain English; it was understood by them just as well as it was by me; no question about the understanding.

Mr. TAUGHER.—Q. How long after the making of the charter-party of February 26, 1910, did you keep possession of the "Oakland"?

A. We had possession of it until the 15th of August, 1916.

Q. Had you finished the job for the Atchison, To-

(Testimony of H. C. Cutting.)

peka & Santa Fe and the City of Richmond at that time?

A. We had not finished either one; we had the Santa Fe about three-quarters completed, and the city job about one-third completed.

Q. Who served you with notice or notified you that the Standard American Dredging Company required the return of the "Oakland"?

A. Mr. Connor delivered the notice to me personally, signed by Mr. Perry.

Q. Did the Standard American Dredging Company know at that time that you had not completed the contract with the Santa Fe and with the City of Richmond?

Mr. LILLICK.—I object to that as irrelevant and immaterial.

A. They were just as familiar with the status of the case as I was.

Mr. TAUGHER.—Q. Did you tell them at the time that you had not completed it or was there any discussion between you and Mr. Connor as to how far towards completion you were on those contracts?

[176]

Mr. LILLICK.—We object to that on the ground it is irrelevant and immaterial.

A. Yes. Mr. Connor and I talked over the situation just as it was, and I told him, Connor, at the time, I says, "Why, you know very well that I have not those contracts completed; but then," I says, "you can have your boat, but," I says, "I want mine, I want the 'Richmond.' "

(Testimony of H. C. Cutting.)

Mr. LILLICK.—We ask that the answer be stricken out on the ground it is immaterial and irrelevant, and that the charter-party fixed the rights of the two parties.

Mr. TAUGHER.—Q. Just state what contracts for filling at Richmond the Richmond Dredging Company had, with whom the contracts were made, and the amount of material required on each of those contracts.

Mr. LILLICK.—Objected to as immaterial and irrelevant, and having nothing to do with the issues in this case.

A. Why, we had a contract with the Atchison, Topeka & Santa Fe Railroad Company for a little over 225,000 yards.

Mr. TAUGHER.—Q. Cubic yards?

A. Cubic yards. And a contract with the city of Richmond for about 94,000 yards. But we figured that we would have to pump at the very minimum 400,000 yards, because the city job was street building, and we could not afford to put up levees; we had to fill the streets without levees, so of course we would have to pump much more material than we actually got paid for.

Q. How far were those contracts completed when the Standard American Dredging Company served notice on the Richmond Dredging Company that it would require the return of the "Oakland"?

Mr. LILLICK.—We object to that question on the same grounds, that it is irrelevant and immaterial.

(Testimony of H. C. Cutting.)

A. Well, I had 182,320 yards done on the Santa Fe job, and I had about 35,000 yards done on the city job.

Mr. TAUGHER.—Q. When the Standard American Dredging Company required the return of its dredger "Oakland" and served notice to that effect on the Richmond Dredging Company, what did the Richmond Dredging Company do with respect to that notice, in conformity with that notice?

A. We complied with the notice and returned their dredger "Oakland" and at the same time demanded the return of our dredger "Richmond."

Q. Did you return the "Oakland" to them?

A. Returned it to them immediately, on the 16th.

Q. Did the Standard American Dredging Company return the "Richmond" in accordance with such demand? A. It did not.

Q. Have they ever returned it? I mean have they since returned it? A. They have not.

Q. What was the effect of the Standard American Dredging Company's refusing and neglecting to return the "Richmond No. 1"?

Mr. LILLICK.—Objected to as irrelevant and immaterial.

A. Well, it left us without the means of completing either of the contracts, resulting in a lawsuit with the Atchison, Topeka & Santa Fe Company, which is still in court.

Mr. LILLICK.—I ask that the answer be stricken out as immaterial and irrelevant.

(Testimony of H. C. Cutting.)

Mr. TAUGHER.—Q. How long has that been pending?

A. It has been pending something over a year—resulting in a dead loss of between \$10,000 and \$12,000 on the city contract, because I had no means of completing that city contract, and I had a bond up for its completion, and I had to make a deal with the city trustees [178] whereby they compelled me to give up all claim to any payment for about 35,000 yards of filling that I had put in there in order to escape responsibility on my bond; otherwise I would have forfeited my bond for not completing the contract; but I made a deal with the city trustees to give up all claim to what I had done on the contract in lieu of their exonerating my bond.

Mr. LILLICK.—We ask that the answer be stricken out on the ground it does not apply to any issue in the case, the Court having stricken out of the libel that portion in which the libelant attempted to have in it referring to the losses by the Richmond Dredging Company upon those two contracts.

A. (Contg.) That is just to show how heartless the Standard American Dredging Company was.

Mr. TAUGHER.—Q. Did the Standard American Dredging Company or its officers know that you had bonds up for the completing of these jobs in accordance with the terms of these contracts?

A. Well, I don't know whether I ever mentioned that I had bonds up, but they know that is the usual practice, to put up a bond for the completion of a contract; that is always done. They knew I

(Testimony of H. C. Cutting.)

had up a certified check to do that Stockton job, and they thought they would burn that, but they did not; I got out of it.

Q. When did you first learn that the Standard American Dredging Company had taken off the old engines that were on the "Richmond No. 1" and put on in place thereof two other engines?

A. Well, I knew they had taken off the old engines—well, I understood that they took those engines off up at Eureka and set them out on the bank. I understood that from them. Then, of course, I saw the engines over there at Richmond on the wharf of the warehouse. [179]

Q. Of what company?

A. Of the Point Richmond Canal and Land Company. Let me see; I think that was in July, the latter part of July.

Q. What year?

A. 1910. But I did not know what they had put on there. I did not know that they had put those engines on until the 13th of August when Connor delivered that notice to me, because then I asked him what power he was using, and he told me that he had put on these Atlas gas engines.

Q. How soon after you learned that these new engines, the Atlas gas engines, had been put on the dredger "Richmond No. 1" in place of—what kind of engines were on there?

A. Samson gas engines.

Q. (Contg.) —that were put on in place of the Samson engines that were on the dredger when you

(Testimony of H. C. Cutting.)

delivered it to the Standard American Dredging Company, did you claim the ownership of the engines, the Atlas gas engines that had been put on by the Standard American Dredging Company?

Mr. LILLICK.—Objected to as leading.

A. I never had an idea that they would claim the right to take them off. I supposed they were put on there in the nature of a repair, just the same as putting on a new pump or new boiler tube or anything else; but I had a conversation with Mr. Perry in either October or November of 1910, in which he asked me point blank if I claimed those engines and I says, "Of course I claim those engines; you do not think you can take my engines and wear them out and throw them away as a lot of junk and then pull those engines that you put in their place off?" There was no uncertainty about the understanding at that time.

Mr. TAUGHER.—Q. What do you mean by there was no uncertainty [180] about the understanding at that time?

A. Well, that was the time that I learned that his intention was to take those new engines off and I told him he had no right to do it, and at that time we discussed the whole situation, and I says, "Well, do you expect to take the new pump off and put back that old pump that you have got stored over there in the warehouse, too?" I says, "Do you expect to take off all the decent cables and return me nothing but a pile of junk?" And he says, "Well, you won't

(Testimony of H. C. Cutting.)

get those engines," and I told him we would try awful hard.

Q. He knew at that time that the Richmond Dredging Company claimed to own those Atlas gas engines that had been put on the dredger by the Standard American Dredging Company?

A. I do not think I left a shadow of a doubt in his mind but what we claimed those engines, and we were going to try to get them, and I told him at that time that I thought he was kind of playing a game with me, that was his means of putting me out of the game.

Q. At the time you had this conversation with Mr. Perry was this libel still pending in this court?

A. Yes, the libel was pending at that time, and we were making every effort to get the dredger.

Q. When did you first see the old Samson engines that had been taken off the dredger "Richmond No. 1" after they had been taken off her?

A. It was the latter part of July, I think, that I saw them over there on the wharf.

Q. What wharf?

A. The wharf of the building belonging to the Point Richmond Land and Canal Company over at Richmond.

Q. While they were on the property of the Point Richmond Land and Canal Company did you cause an examination of those engines to be made, at Richmond? [181]

A. I caused a thorough examination to be made of them on either October 11th or 12th, or some time

(Testimony of H. C. Cutting.)

along about there, of 1910.

Q. Who made such examination?

A. Well, Mr. Musladin, and Bill Kruger, and Mr. Goodin and myself were there, and Musladin and Kruger did the hard work, and we did the looking on.

Q. Where is Mr. Kruger now?

A. Mr. Kruger is in the employ of the Standard American Dredging Company at San Pedro.

Q. Where is Mr. Goodin, if you know?

A. Well, the last I heard of him, when I inquired from the Doak gas engine people, he was in Texas.

Q. Have you had any experience in repairing and operating gas engines, Mr. Cutting?

A. Yes; I have had quite an extended experience for one who is not really a machinist or engineer. I operated a stationary gas engine at Tonopah.

Q. For whom?

A. For myself. I have had an automobile ever since automobiles were made, and they are all gas engines, they are all the same principle, and while I do not claim to be a machinist I can take any gas engine to pieces and put it together and make it run if it is capable of being run.

Q. Don't you think you had better modify that a bit?

A. I do not know. I have never been stumped yet and until I am stumped I can say that.

Q. What would you say as to the condition of those Samson engines at the time that examination was made by Mr. Musladin and Mr. Kruger, your-

(Testimony of H. C. Cutting.)

self and Mr. Goodin?

A. Well, at the time we made that examination I gave Mr. Goodin and Mr. Musladin to understand that I wanted the engines repaired, and they came to the same conclusion that I did, that the engines were not worth repairing; [182] they were simply good for junk and nothing else. And I might add that I think that is their present condition.

Q. Have you had any experience with hydraulic dredgers, Mr. Cutting?

A. Well, I built the "Richmond." She was built in September, 1907, and I operated her about eight months at Richmond, and then afterwards about three months at San Rafael; I think I know something about them.

Q. Did you operate any other dredger besides the "Richmond"?

A. Well, yes, I operated the "Oakland" from the first part of March to August 15th, 1910.

Q. Both of those dredgers were directly under your control during all those operations?

A. Yes. Then I operated two clam-shell dredgers over there at Richmond for some little time, and also operated a steam shovel during a time and a ditcher for a little while over there; then I had a whole lot of experience with machinery around the mines.

Q. How long after an entirely new hydraulic dredger is put in operation would she be likely to run before repairs would be needed on her or her equipment?

A. Well, you are sure to have some trouble with

(Testimony of H. C. Cutting.)

an entirely new machine right off, undoubtedly, but after you get it to working, why, you are liable to have trouble in 15 minutes after you start up; a dredger is something that is more uncertain than an automobile; you can't tell when you are going to have trouble with it.

Mr. SPILMAN.—Q. The first account you open on a dredger is a repair account.

A. The first account you open on a dredger is a repair account because every part of the dredger is subject to [183] very heavy wear and very heavy strain; all its work is out of sight, and you can't see what you are bucking up against, and you are liable to tear up a couple of thousand dollars worth of machinery in ten minutes.

Mr. TAUGHER.—Q. Then repairs are frequently required upon almost all dredgers, are they?

A. Well, you might say constantly required; the repair and supply account about your largest account.

Q. How are the various parts of a dredger ordinarily repaired?

A. Well, they are always repaired by replacement at the time. You may take certain parts that have been removed and by patching or fixing them over you may use them again as a spare, but you don't stop the dredger to make the repair at the time, unless it is some simple little thing, you replace it by a new part.

Q. That is the ordinary way of making repairs to a dredger.

(Testimony of H. C. Cutting.)

A. That is the ordinary way because the main thing in a dredger is to keep it running; time is the greatest element, and you can't stop to patch; you have got to have new parts and replace it, and then do your patching while the machine is running; the main object is to keep the machine running.

Q. On a contract taken at a fair price, what would be the earning capacity per hour of the "Richmond No. 1," approximately, of course, I mean.

A. Well, I will have to answer that by explaining that when the dredger is running, actually operating, why, she will probably—you have got to figure on earning—

Q. You can answer that question without going around the continent.

A. No, I can't. I have got to do a little figuring [184] on it. You have got to have the dredger earn from—when it is actually operating, you have got to figure that it will earn all the way from \$20 to \$50 or \$60 an hour, because you get up against a lot of troubles that break your machinery and cause you shut-downs, when you are not earning anything; so when she is actually operated she has got to earn big money.

Q. How are repairs on a dredger ordinarily made to the cutter knives?

A. Always by replacement; they are worn out and worthless.

Q. And the suction pipe?

A. When you have to repair a suction pipe you have got to take it out and put in a new one.

(Testimony of H. C. Cutting.)

Q. Boiler tubes?

A. Same way; they have got to be replaced.

Q. Rubber connections?

A. Well, they are replaced with new ones, and then if the connection is not too badly worn away it can be patched and used as a spare.

Q. Cables?

A. Well, cables, swinging cables, are replaced by a new cable; that is the starboard swinging cable; and then the unworn portions are used about the dredge, put on dead men, etc.

Q. Did the Standard American Dredging Company ever ask permission of the Richmond Dredging Company to remove from the dredger "Richmond No. 1" the Samson gas engines that were aboard her when possession of the dredger was delivered to the Standard American Dredging Company on or about February 19, 1909?

A. They not only did not ask permission, but we knew nothing about it at all.

Q. Was the Richmond Dredging Company ever notified by the Standard American Dredging Company of the contemplated removal of those engines?

A. We knew absolutely nothing about it. [185]

Q. When did the Standard American Dredging Company get those old Samson engines from the warehouse at Richmond for the purpose of reinstalling them on the dredger "Richmond No. 1"?

A. The last part of January, 1911.

Q. Did the Standard American Dredging Company

(Testimony of H. C. Cutting.)

make any effort to repair the engines of the "Richmond No. 1" between December 2, 1910, when it finished the Walnut Grove job, until the latter part of January, 1911?

A. They could not have made any effort to repair them because they were in the warehouse over there at Richmond.

Q. During this period between December 2, 1910, and the latter part of January, 1911, did you know of any work to be done by a hydraulic dredger which the Richmond Dredging Company intended to put in a bid for, or would have put in a bid for had it had possession of the dredger "Richmond No. 1"?

Mr. LILLICK.—Objected to as irrelevant and immaterial.

A. Well, we had a job to do with the dredger down at Redwood City, and then if we could have gotten our dredger we would have bid on that Key Route Basin job. I think that was advertised and let about the last of January, I think, 1911.

Mr. TAUGHER.—Q. What size were those jobs?

A. Well, the Redwood City job was a small job, but the Key Route Basin job was about a \$300,000 job.

Q. How big was the Redwood City job?

A. Oh, that was a small job; that job was to be done in conjunction with Mr. Franks, Mr. Franks got the contract and we were to do the job with him.

Q. Did you put in a bid for either of those jobs?

A. I did not dare to put in a bid. I had enough of putting in [186] bids on the Stockton job. I

(Testimony of H. C. Cutting.)

was glad to have my \$2,500 certified check back. If I had put a bid in on these jobs I would have had to put up a bond or certified check to enter into a contract if I was the successful bidder, and if I could not get my dredger in time to start in work, why, I would forfeit my check or my bond, whatever it was, that I had put up. I got enough of that on the Stockton job.

Q. Could the dredger "Richmond No. 1" be operated in her present condition?

A. Well, from my observation of those engines I do not believe that you can turn the engines over even if they are oiled up and loosened up from the rust, I do not believe the engines will turn themselves over, and I am sure they would not turn the machinery in the dredger over.

Q. Before the dredger "Richmond No. 1" could be operated, what repairs would be necessary on her?

A. Well, the first repairs would be to replace those engines with new engines. I have never examined the machine to see what other repairs are necessary right on the machine itself. There is no pipe there. There is probably 300 feet of pipe lying there on the bank, but without a close inspection of it I should say that the pipe was worthless, worn out; so it would be necessary—two things are sure, it would be necessary to replace the engines and to buy a whole new outfit of pipe and rubber connections. What other repairs would be necessary, I do not know, because I have not examined the machine.

Q. What are the value of those old Samson en-

(Testimony of H. C. Cutting.)

gines that are now on the "Richmond" as engines?

A. Well, they have no value as engines. You might get \$10 or \$12 a ton for them as junk.

Q. Did Perry ever try to buy the "Richmond No. 1" from the [187] Richmond Dredging Company?

A. He tried to buy it and trade me out of it half a dozen times, at least.

Q. When was the dredge "Richmond No. 1" built?

A. It was completed in September, 1907.

Q. Were her engines new then?

A. Perfectly new.

Q. How long did the Richmond Dredging Company operate the "Richmond No. 1" since her construction?

A. Operated up from the time it was completed to about the first of June.

Q. That is how many months?

A. Well, that would be about eight months, and then it was turned over, chartered to the Standard American Dredging Company for the San Rafael job.

Q. Did the Richmond Dredging Company operate the dredger "Richmond No. 1" subsequently to that time?

A. It operated for about three months over at San Rafael.

Q. Has the Richmond Dredging Company ever operated the "Richmond No. 1" since that time?

A. No; we have never had the dredger since that time.

(Testimony of H. C. Cutting.)

Q. Who besides the Richmond Dredging Company has operated the dredge "Richmond No. 1"?

A. The Standard American Dredging Company.

Q. The Richmond Dredging Company operated her about how long?

A. Well, all together, about 11 months.

Q. And the Standard American Dredging Company for about how long?

A. Well, take 11 months from the time elapsing between September, 1907, and the present time, all that time she has been in the possession of and operated by the Standard American Dredging Company.

Q. That is, ever since she was built with the exception of about [188] eleven months the Standard American Dredging Company has operated her?

A. Yes, sir.

Q. And had her in its possession?

A. Yes. I might say that the dredger "Richmond," was built for a particular purpose, to work over at Richmond where the material is very hard. She was very strongly built, and her capacity was thoroughly understood and well defined, and she operated perfectly satisfactory during the eight months that we operated her.

Q. How much was the "Richmond No. 1" worth on September 12, 1910, in your opinion?

A. September 12, 1910—well, I should say she was worth easily \$40,000; the dredger and equipment. That is I suppose she was at that time. Of course the way it has been returned to me there is quite a difference.

(Testimony of H. C. Cutting.)

Q. How long did you operate the "Oakland" at Richmond?

A. From about the 10th of March to the 15th of August.

Q. Did you make any extensive repairs on the "Oakland" and her equipment during that time?

A. Oh, yes, we made the usual repairs. I think I have got a statement of all repairs and other expenses right here in my pocket.

Q. Just state what was the value of those repairs to the "Oakland" and her equipment during the period that you operated her at Richmond.

A. Repairs and supplies, \$7,893.80, on the "Oakland."

Q. Did those repairs include the replacement of various parts of the dredger and her equipment?

A. Oh, yes; we replaced all the suction pipe; we replaced a big spur gear wheel and put all the rubber connections; pump liners, cables; a good many cables. I do not think of any others.

Q. Did you attempt to remove any of those before you delivered [189] back possession of the "Oakland"? A. Certainly not.

Q. Did you consider that under the charter-party you had the right to take off any of those parts that you had replaced on the "Oakland"?

A. We certainly did not think we could take off anything that we had once put on it.

Q. Do you think that under the terms and conditions of the chartering of the "Richmond No. 1" to the Standard American Dredging Company that the

(Testimony of H. C. Cutting.)

Standard American Dredging Company had any right to take off the engines that it had put upon the "Richmond No. 1" in place of the Samson gas engines that were on the "Richmond No. 1" when she was delivered to the Standard American Dredging Company?

A. Why, I do not think they had any more right to take the engines off and put back the old worn out ones than they have any right to take off the new pump that they had put on and put on the old pump; however, as to the old pump, I suppose if they had not worn out the new pump so that it was not worth taking off, they would have taken off the new pump and put back the old worthless one, too; but that sand up there cut up the new pump; I have not examined it, but I suppose it was in such condition it was not taken off.

Q. Read the question, Mr. Reporter.

(The last question repeated by the Reporter.)

A. No; of course, they did not have a right to take off anything.

(A recess was taken until 2 P. M.) [190]

AFTERNOON SESSION.

H. C. CUTTING, direct examination resumed.

Mr. TAUGHER.—Q. Did any of the officers of the Standard American Dredging Company during 1910, say anything to you as to the condition of the Samson gas engines that had been removed from the dredger "Richmond No. 1"?

A. Yes, sir, Mr. Connor one day, when we were coming over from Richmond remarked—

(Testimony of H. C. Cutting.)

Mr. LILLICK.—Objected to on the ground that anything that Mr. Connor said is not binding on the company unless brought home to the company, and also irrelevant, incompetent and immaterial.

A. (Contg.) —that they had finished the Eureka job, and that the dredger would be down here, and that they would probably turn it over in a little while and in speaking about the dredger he said that the engines were worthless, that they were of no account.

Mr. TAUGHER.—Q. To which engines was he referring?

A. He was referring to the Samson gas engines which were on the dredger at the time the Standard American Dredging Company took it from us, and he remarked that I would have to throw them aside and get other motive power on the machine.

Q. Tell us, if you can, what is the usual method of repairing the various parts of a hydraulic dredger that had become defective through long use.

A. Well, when a part is worn and breaks, it is replaced by a new part because it does not pay to patch the various parts. The object is to keep the machine running, and if you try to [191] patch it up it will just cause you another shut down, and where a dredge is earning from \$20 to \$60 an hour when she runs, it pays to keep her running, and the way to keep her running is to have her in the very best condition, and that is by replacing the old worn parts by new ones. Of course there are some parts that can be patched up, and they are taken out and used for spares, at different times.

(Testimony of H. C. Cutting.)

Q. You would say that replacement is the ordinary method of repairing most of the parts of a dredger, would you?

Mr. LILLICK.—Objected to as leading.

A. At all times, because they cannot afford to lose the time that it would take to patch it.

Mr. TAUGHER.—Q. The question being objected to because of its form I will ask another question. Which would you say is the ordinary method of repairing the various parts of a dredger that had become worn?

A. By replacing those parts with new parts.

Mr. TAUGHER.—That is all.

Cross-examination.

Mr. LILLICK.—Q. Who designed the dredger "Richmond No. 1," Mr. Cutting?

A. H. G. Plummer of the Wright-Plummer Company, but it was really designed by Plummer.

Q. What did she cost?

A. Why, if I remember correctly the dredger and her equipment cost a little over \$40,000.

Q. What did the two Samson gas engines cost when they were new?

A. I am not sure, but between \$5,500 or \$5,600. It was between \$5,500 and \$6,000. I do not know whether that included the clutch and all the other attachments to it, or not.

Q. Were they the engines that were installed on the dredger [192] when she was first built?

A. Yes, sir.

Q. What particular portions of the dredger were

(Testimony of H. C. Cutting.)

these engines intended to work?

A. The engines connected directly on to the pump shaft, but from the pump shaft we ran the cutter also.

Q. Do you know what their power was when they were first put in? A. 150 horse-power.

Q. Was that their shop rating?

A. They were guaranteed to develop 150 horse-power and I never heard any complaint but what they did develop 150 horse-power.

Q. Were they the ordinary stock engines, or were they built to order? A. That I could not say.

Q. Who was in charge of the engines during the period when you were working the "Richmond No. 1," starting from the first job that you did over at Richmond and continuing with that job you did over at San Rafael?

A. Well, at first I think we had a man from the Samson Iron Works, for a short period.

Q. Do you know his name?

A. No, sir, I do not; then after that George Betts.

Q. The man whom you first had was a man by the name of Wheatly?

A. Wheatly—I believe that was his name; that sounds familiar.

Q. Was he the man who ran it from the first up to the time that Betts took it over?

A. Yes, sir, I think he was, but his management was not as satisfactory as it could have been.

Q. Why?

A. Well, he did not seem to get the work out of

(Testimony of H. C. Cutting.)

the engines and keep them up to their standard, but we never had any trouble after Betts took charge of the engines.

Q. But you did have trouble while Wheatly had them, did you?

A. Well, really that is so long ago I could not remember. It was [193] a new machine and I could not say if the trouble was with the engines, or not. With all new machines you are bound to have a little trouble.

Q. What was the size of the centrifugal pump installed on the dredger when the engines were first put on her? A. 12 inch.

Q. That is the same size pump as they have always driven? A. The same size pump.

Q. Do you think, speaking from your knowledge of the dredging business, that the two engines were sufficiently strong to drive the 12-inch pump, and the cutter too, and obtain reasonable results?

A. Now, of course that all depends. Every machine has its limitations. It is built to perform a certain work and everything is designed in proportion. Now, the reason why we put the cutter and the pump on the same motive power was that the dredger was going to work at Richmond in hard material. Now, we figured that if the material was extra hard, and quite a bit of power was used up by the cutter to disintegrate the material, that there would not be as much material cut, do you see, and consequently not as much delivered to the pump, and you would not need so much power on the pump.

(Testimony of H. C. Cutting.)

On the other hand if the material was cut easy and delivered a lot of material to the pump, you would have your power on the pump. Do you see the way that works?

Q. Do you remember the size of the pulley you had on the pump shaft when the dredger was first put in operation?

A. No, sir, I do not. I do not remember that. We changed pulleys on the pump once or twice until we finally got a pulley that handled it all right. [194]

Q. Do you remember whether or not the first pulley you had on was 24 inches in diameter?

A. Well, I do not remember the diameter, no, but I believe the first pulley we had on was too small, that it threw too much work on the engines, and that we took that pulley off and put on a larger pulley.

Q. Do you know if the pulley that you put on subsequently was 32 inches?

A. Well, I do not know, but I should judge that what you have stated was something near the right thing.

Q. Do you know the reason that the mechanical lifts, or intake valves on the cylinders were taken off?

A. No, I do not.

Q. Do you know how many revolutions a minute the engines ran when they were first put on?

A. No, sir, I do not know that. I did not have time to bother with those details.

Q. Do you know how many revolutions they would have had to make to develop 150 horse-power.

A. No, sir, I do not. Of course, I heard Betts

(Testimony of H. C. Cutting.)

say here the other day what it took, and I could repeat that, but from my own knowledge, I could not.

Q. Do you remember who the pump was built by which you had on at first?

A. The United Engineering Works, I believe.

Q. Do you know what its size was?

A. The pump?

Q. Yes. A. A 12-inch pump.

Q. It was a 12-inch pump? A. Yes, sir.

Q. Do you remember the diameter of the runner?

A. No, sir, I do not.

Q. Do you remember if it was a close or open runner? A. No, sir, I do not remember that. [195]

Q. Do you remember the number of vanes that the pump had?

A. No, sir, I do not remember those details.

Q. What was the diameter of the discharge pipe that you had in use? A. 12 inch.

Q. Do you remember the minimum length of the discharge pipe over at Richmond on the first job you were working on? A. The minimum length?

Q. Yes?

A. Well, when we first started out we did not have over 200 or 300 feet of pipe on it.

Q. And the maximum length of it during that job?

A. I think we worked up to 1800 feet.

Q. What was the average length?

A. I do not believe the average length would be over 1500 feet.

Mr. TAUGHER.—What is the pertinency of that. What is the use of incumbering the record with that

(Testimony of H. C. Cutting.)

kind of thing, what we did with the dredger prior to your taking it?

A. (Contg.) The dredger was built for a particular purpose, and we knew if we took that dredger to do that Santa Fe job we knew that we should have to use a booster. We expected to use a booster on the job. We knew that we could not pump out any 3,000 or 4,000 feet with it without a booster. It was not designed for that purpose in view.

Mr. LILLICK.—Q. Do you know the capacity of the dredger as to cubic yards per hour in her condition as she was just after she was built, working at Richmond?

A. In the material at Richmond?

Q. Yes.

A. Well, I do not know, but it seems to me that we put out over there as high as 2,000 yards in one day, but that is very hard material, you know. The "Oakland" working at full [196] capacity, and 24 hours a day, we only got four thousand yards out of her once or twice.

Mr. TAUGHER.—Q. Which did you work 12 hours a day, or 24 hours?

A. I think on the "Richmond" we worked half the time 24 hours and half the time 12 hours.

Mr. LILLICK.—Q. The 2,000 cubic yards is based on an estimate of 24 hours a day?

A. That would be a 24-hour run. Plummer thought we could get more than that out of her, but I do not believe we got more than 2,000 yards out of her in 24 hours. That is very hard material. It

(Testimony of H. C. Cutting.)

is hard to pump and hard to cut. It is clay.

Q. What is the character of the material over at San Rafael in the work you were doing there?

A. That was very much lighter material, most of it was a light soft mud.

Q. Do you know whether you got more out of her over there?

A. I really do not know very much about that job. Wernse attended to that mostly.

Q. You do not know anything about the vacuum on the suction?

A. The vacuum on the suction depends greatly on the material you are putting through it. On the "Oakland" over there we carried about 12 pounds of vacuum. I do not know whether the "Richmond" used to carry that, or not. It is so long ago since we worked at Richmond that I do not remember.

Q. How much of a lift was there at Richmond on the work that you did there with her?

A. Well, at low tide I suppose there was about 12 or 14 feet lift.

Q. That was the greatest height that you had to lift the material? A. Yes, sir.

Q. What was the situation over at San Rafael as to the lift? [197]

A. I do not think it was quite so high. Really, I never was over at San Rafael at all. I did not see that work at all.

Q. On the work that was done over at San Rafael, after the dredger was leased, was that not done by

(Testimony of H. C. Cutting.)

the California Reclamation Company?

A. Well, as I stated I do not know whether Mr. Perry took the contract in the name of the California Reclamation Company, or the Standard American. My impression is that he took the charter-party in the name of the California Reclamation Company.

Q. Do you know how long the California Reclamation Company operated her at San Rafael?

A. Well, I think about four months, but I would not be sure.

Q. Do you remember whether the dredger operated satisfactory for you while you were operating it at San Rafael?

A. No, sir, it did not operate satisfactory at all. It was in bad shape.

Q. What was the condition?

A. Well, Wernse said that Perry left it in bad shape, all shot to pieces, was the way he expressed it.

Q. Did you not do some work at San Rafael before the California Reclamation Company took the dredger over?

A. No, sir, the dredger never went away from Richmond until Perry took it away to do that work.

Q. Do you know anything of the particulars in regard to why the dredge was as Wernse put it, "shot all to pieces"?

A. Well, you mean the details in which she was defective?

Q. Yes.

(Testimony of H. C. Cutting.)

A. No, sir, really I do not. I heard considerable complaint about the condition that the engines were in and that the pipe was badly worn. [198]

Q. You do not know anything about the details of the condition of the engines? A. No, sir.

Q. Were the engines in the same shape after you finished your work at San Rafael and turned your dredger over to the Standard American Dredging Company as they were while you were doing the work?

A. Well, I think they were in better shape when we quit, because I know we spent quite a little time in fixing them up.

Q. In repairing the engines, do you mean?

A. Yes, sir.

Q. You do not know what parts were repaired?

A. No, sir, I do not.

Q. You would not say that if a rocker-arm on the engine was worn out, you would do anything other than put a new rocker-arm on?

A. No, sir, I really do not know anything about it. As I say, I was not on the job at all while they were working over there.

Q. Even if a rocker was worn out you would not do anything more than put a new rocker on, would you?

A. If any portion of the engines were worn out we would have put a new part on, because it does not take much experience to teach us that it does not pay to try and patch a dredger.

Q. That same thing would have been true if the

(Testimony of H. C. Cutting.)

valve on the pump was worn out, you would put on a new valve on the pump?

A. That would have been my method of doing it, but what Wernse did I do not know.

Q. You testified on your direct examination that Kruger and Musladin came to the same conclusion that you had regarding the worthlessness of the engines when they examined them. You had already reached a conclusion yourself before you examined the engines, had you, Mr. Cutting? [199]

A. I do not believe I said anything about the conclusion that Kruger had come to. I said that after a thorough examination that Mr. Musladin expressed the opinion that the engines were beyond repair and that that expressed my views, but that conclusion on my part was reached after the examination was completed, and then I left them to put the engine together.

Q. You said that Mr. Connor in the conversation you had with him coming over from Richmond remarked that the engines were worthless, and of no account. Do you remember anything else that was said at that time by him about the engines?

A. About what?

Q. About the engines?

A. Well, no other than that. I do not recall anything just now.

Q. Did he not say something about the engines never having had power enough even when they were first put on the dredger to do the work?

A. I believe he did say something about that, and

(Testimony of H. C. Cutting.)

I told him that the engines had always done the work they were designed to do, but of course if anybody tried to get as much stuff through the "Richmond" as the "Oakland," which is a four times larger dredger, gets through, of course, I said the machine has not got the power on it for that. I told him we never had any trouble with the machine doing what she was designed to do.

Q. Were those engines when they were first put on, Mr. Cutting, sufficiently powerful to pump the material through that 12-inch pump if the material was of such a character as to fill the pump full?

A. Well, you know you can choke any dredger. We choked up the "Oakland" several times, and she has got a bigger horse-power on her. We plugged the pipes on the "Oakland" half a dozen times.

[200]

Q. Was that not on account of the material being clay and sticky?

A. Yes, sir; it is hard material to pump, very hard. You can take any dredger over to Richmond, I do not care what it is, if she has got sufficient power on her cutter to disintegrate the material you can choke her up.

Q. What was the result of that suit that you had with the Santa Fe? A. It has not been settled yet.

Q. Did you recover judgment in it?

A. We got a judgment in it, yes.

Q. How much was the judgment?

A. \$25,925, and costs.

Mr. TAUGHER.—Adding the costs the judgment

(Testimony of H. C. Cutting.)

really runs over \$26,000.

The WITNESS.—But the job costs us more than we get out of it even if they pay that judgment. I might add that was, because we were very badly mistaken in the "Oakland." We were very badly misled.

Mr. LILLICK.—Q. When the Standard American Dredging Company tendered you the dredge on February 3d, and again on February the 6th, 1910, did you look over the dredger at all?

Mr. TAUGHER.—I object to the question on the ground that the question assumes the fact that a tender was made. It has not been shown heretofore in this action that any tender of the dredge ever was made. The only thing that ever was done so far, as is developed yet in the action, is that they wrote a letter on that date, but no tender of the dredge was made other than the writing of the letter.

A. No, sir, I did not see the dredger for quite a while after that.

Mr. LILLICK.—Q. Did you have anyone from your office, or [201] anyone acting under instructions from you, examine the dredger or equipment on February 3d, or on February 6th, or on any date near to that date?

A. No, sir, I did not, because I understood from Mr. Perry himself, that they had taken off those new engines and put back the old worn-out ones, and I told him at the time when he talked about delivering the dredger to us, I said, "You did not get the dredger from us; you got it from the Court; you had

(Testimony of H. C. Cutting.)

better deliver it to the United States Marshal."

Q. Was that the only objection you made to the offer at all?

A. I do not think I made any objection to the offer. I did not write any letters, and I did not see anybody afterwards, but of course I knew from my examination of those engines that they were worthless, and that they would not run the dredger, and the charter-party provides that it shall be turned back to us in condition to immediately commence work. My knowledge of the fact that those engines were on there told me she was not delivered anyway according to the charter-party, and my understanding all the time was that the dredger must be delivered back to the Court, because that is what the bond called for, and in the condition she was at the time the bond was given.

Mr. TAUGHER.—Q. Did you write a letter in answer to that letter to you of the Standard American Dredging Company? A. No, sir, I did not.

Q. I think you did. A. Of February 6th?

Q. Yes. A. Maybe I did.

Q. I have not got it here, but it is in evidence. You consulted with me concerning it.

A. I consulted with Mr. Taugher, and he may have dictated a letter which I signed. [202]

Mr. LILLICK.—That is all the cross-examination that I have.

(It is agreed between the parties that the Richmond Dredging Company wrote a letter to the Standard American Dredging Company in answer to

(Testimony of H. C. Cutting.)

their letters of February 3d and 6th, which letter is in evidence in this case.)

Redirect Examination.

Mr. TAUGHER.—Q. Mr. Cutting, do you not remember whether or not the Richmond Dredging Company wrote a letter to the Standard American Dredging Company in answer to their communications of the 3d, or 6th of February, 1910?

A. Yes, sir. Since you call my attention to it I remember that there was a letter written from our office in answer to their letters.

Q. Under what circumstances was that letter written?

A. Mr. Taugher, my attorney, dictated the letter and it was sent from our office.

(An adjournment was here taken until to-morrow, Wednesday, October the 18th, at 2 o'clock P. M.)

[203]

Wednesday, October 18th, 1911.

[Testimony of August Harding, for Respondent.]

AUGUST HARDING, called for the respondent, sworn.

Mr. LILLICK.—Q. What is your occupation, Mr. Harding? A. Mechanical engineer.

Q. How long have you been a mechanical engineer? A. About 20 years—20-odd years.

Q. Will you state your experience in a general way during that time?

A. Well, most of this time I have been engaged in the construction, designing and building of gas en-

(Testimony of August Harding.)
gines and other machinery.

Q. Where is your office at present?

A. I have retired for the present; once in a while I do work with the Golden State and Miners Iron Works.

Q. What were you going to say about designing?

A. Designing gas engines, I said.

Q. Are you acquainted with the various types of gas engines on the market here in San Francisco?

A. To an extent; yes.

Q. What has been your experience with reference to gas engines upon dredgers?

A. Well, I have had very little experience as to gas engines on suction dredgers. We installed the first gas engine on a clam-shell dredger that was put in on this coast. And I have watched their operation.

Q. What is your age, Mr. Harding?

A. I am 63.

Q. Has your experience covered the building, repairing and designing of gas engines?

A. Designing and building, repairing and installing gas engines, yes.

Q. Have you had occasion during your experience to test gas engines and operate them?

A. Yes, sir. [204]

Q. Mr. Harding, have you see the two Samson gas engines which are on the dredger "Richmond No. 1"? A. Yes, sir.

Q. When did you see them?

A. Yesterday.

(Testimony of August Harding.)

Q. Did you examine the engines thoroughly, or as thoroughly as you could without taking them down or operating them?

A. Yes, we looked at them as close as we could without being permitted to take off certain parts to see the inside, the condition, especially of the valves.

Q. Could you see anything as to the condition of the crank-shafts on the engine?

A. From their outward appearance, and we tested them so far as we could as to possible lost motion in them, and they seemed to be in good condition.

Q. How many fly-wheels are there on the two engines? A. There is one fly-wheel on each engine.

Q. What is the condition of those fly-wheels?

A. They seemed to be perfectly normal. **One of** them had a little band shrunk on the outside of the hub, on the hub outside of the wheel.

Q. Could you tell anything as to the condition of the hub upon which that fly-wheel was placed?

A. No. They seemed to be normal, as far as my inspection went.

Q. Could you see any portion of the hub?

A. We could stand in front and examine one, that is the one that did not have the band on. The one that had the little band on was so close to the side of the hull we could not see the end very well; we could see the side of it. It appeared to be perfectly normal. At least the hub was plenty large enough for the size of the wheel.

Q. Did you examine the key which was used to affix that wheel to the hub?

(Testimony of August Harding.)

A. Not any more than looking at them; they seemed to be driven home pretty hard, by the looks of it. [205]

Q. What was the condition as to the play upon the fly-wheel where that key affixed the fly-wheel?

A. Well, I could not say anything about that, because the fly-wheel was keyed on solid, and there is nothing visible to show me what condition really it was in unless a person should attempt to take the keys out and remove the fly-wheel to see whether the fit was a good one and perfectly solid.

Q. Was there any apparent play on the shaft between the shaft and the fly-wheel?

A. Not at all. If there is any play at all an engine won't run; if the fly-wheel is at all loose in the keys it will make such a knocking that they have to find out what it is and have to fix it.

Q. But from your observation of the fly-wheel did those fly-wheels appear to be solid on the shaft?

A. Solid on the shaft.

Q. What was the condition of the studs and bolts on the engines?

A. So far as I could see, there was nothing abnormal about that. All you could see was the nuts on the outside; the nuts on the end of the studs on the outside.

Q. Could you tell anything about the condition of the cylinders, Mr. Harding? A. No, sir.

Q. How about the cylinder heads and the parts connected with the cylinders?

(Testimony of August Harding.)

A. Well, they were in place and looked perfectly normal.

Q. What was the condition of the brasses?

A. So far as I could see they were perfectly normal and had still wearing surface left on them.

Q. In what condition was the piping?

A. The piping was all in place, perfectly normal.

[206]

Q. Never mind the smile from the other gentlemen, Mr. Harding?

A. That don't affect me at all.

Mr. TAUGHER.—Really, it is decidedly humorous, Mr. Lillick.

The WITNESS.—I think the humorous part is all on the other side, so far as my part is concerned.

Mr. LILLICK.—Q. Could you tell anything about the exhaust valves around the engine?

A. No, not except to try and move them on the outside, where it projects through the casing. Of course some of them were jammed, but those that were loose seemed perfectly well fitted.

Q. In what condition would you say they were?

A. So far as I could tell they were all right. Now, the intakes are free, and I pressed them down, the shut-off, and four of them seemed to be very good. The fifth one was slightly loose, and the sixth was quite loose in the guides.

Q. What would be the expense of repairing the one that was a little loose and the one that was quite loose?

A. Well, I could not tell exactly until I took it out

(Testimony of August Harding.)

and found out whether a new valve would be needed. A valve can ordinarily be put in the lathe and bushed, and it would be worth about \$10, I believe.

Q. If you had to put in a new valve entirely what would it cost?

A. A valve is worth about \$3.00. But it is very seldom that an intake valve has to be renewed, because they never get very hot and never wear but what you can touch them up. I have never in my experience put in a new intake valve.

Q. What was the condition of the bases of the two engines?

A. Well, they are simply castings, and there was nothing damaged with them, that I could see.

[207]

Q. They were in good condition?

A. In good condition, so far as I could see, unless there were cracks in it that I did not see.

Q. Where could these cracks have been, if there had been any?

A. That I could not say. Very often cracks are caused by casting strains, but they seldom break except through an underneath strain which is caused by the cooling of the casting, but they sometimes break as anything else.

Q. Was there any evident crack in the base?

A. None whatever that I could see; they might exist without anybody knowing it; if there were they would soon show up, the first two or three explosions the base would go to pieces, if they had cracks in, providing they were caused by a strain of the engine.

(Testimony of August Harding.)

Q. What would you say as to the care those engines had received from your examination of them?

A. From the examination I could not say anything but what the engine was in good working condition.

Q. Would there have been any evidence of any failure to supply the engine with the proper amount of oil that would be evident to you from your examination?

A. No, of course, we tried to turn over one of the engines and could not move it; after standing six months we know in an engine the oil leaks out and it is always stiff, and it is rather an indication that the cylinders fit pretty well when you can't move them.

Q. What is the effect, if any, of overloading a gas engine?

A. Well, I have run a gas engine at full power for year after year without causing any particular harm to it. If an engine is properly constructed, it has a normal load, that is a maximum load which it ought to carry without any trouble; that is, provided it is properly constructed. [208]

Q. What is the effect, if any, upon a properly constructed gas engine of overloading it or of attempting to make it do more work than it is designed to do?

A. Well, the engine is designed to do a certain amount of work, as a rule; that amount it ought to carry without any harm; it is usually the amount that the engine will carry at its maximum.

Q. Assuming that the gas engine is constructed

(Testimony of August Harding.)

and rated as a seventy-five horse-power engine, what would be the effect upon that engine of attempting to put a load upon it of 100 horse-power, temporarily?

A. Well, if the engine was constructed and could not possibly give any more you could not get any more; that is, if you tried to get more power, your engine would simply slow down and stop.

Q. Were there any rocker-arms on those engines?

A. I saw none, no.

Q. Had there ever been any rocker-arms?

A. Not that I could see. I did not look to see if there were any places where they might have been, but there were no rocker-arms; if there were any places for them I did not see them.

Q. What was the condition of the pipe on those engines?

A. Well, the water-pipe, of course, I could not say much about; water-pipe that carries either hot or cold salt water, in my experience, will deteriorate once about every year when it is constantly used, and pipes that are used for the intake, carrying gas and gasoline last for 20 years just as easy as one.

Q. What was the condition of the piping from your observation there yesterday?

A. The pipe was in place and was as good, as far as we could see, as new. Of course, the water-pipe might have been corroded internally; that is constant wear and tear, natural [209] wear and tear; that has to be replaced in these engines. That is why often they use brass pipe, especially in marine

(Testimony of August Harding.)

engines, they use brass pipe instead of iron pipe, because the brass pipe has to be renewed so often.

Q. What was the condition of the cams upon the two engines?

A. The exhaust cams are as perfect as could have been. I did not examine them but, as I understand, they are made of tempered steel, and you would not wear them out possibly in 20 years, if they were hard tempered steel.

Q. You looked at the cams, didn't you?

A. I looked at them; they looked as good as new.

Q. Speaking of both engines, Mr. Harding, from your examination made yesterday, would you say that any repairs were necessary upon those engines other than the two valves that you spoke about here?

A. That is all that I could find from my examination that would be necessary.

Q. You went over there for the special purpose of examining those engines, did you not, Mr. Harding?

A. Yes. Of course if I were going to take those engines and start them to running, of course I would examine the valves; that would be the first thing to see if the valves were properly set and ground tight.

Q. What parts of the engines were there that you could not see, that would by any possibility need repair?

A. Well, the valves of course. I knew about the valves; you can tell by inspection. Of course, the rest of it, the cylinders, you can only tell by actual

(Testimony of August Harding.)

test; that is to say, put them in working shape and turn them over, and see whether they are tight or not; an inspection would be worth nothing. Any man might look at the nicest looking [210] cylinder in the world and the pistons, if they have worn sufficiently to become leaky, they are practically worthless; that is to say, you lose a certain percentage by leakage of the power of the engine.

Q. What parts of the engines were there that you could not see, Mr. Harding, that would by any possibility need repairing?

A. Well, the crank-pins, of course.

Q. What else?

A. And the pistons in the cylinder, and exhaust valves.

Q. Now, if all those different parts which you have just mentioned, which you could not see in the engine—and I am speaking of both engines—needed replacing entirely, what would be the total cost of replacing them?

A. Well, I should figure the engines, the cylinders taken off the base, six of them, taken to the shop, and rebored, new pistons made and fitted in, that would amount to about \$60 apiece; taking them off, taking them to the shop, reboring them, putting in the piston rings, and taking them back and putting them in place again.

Q. As to the other parts.

A. Well, there, I can't very well give you an idea because I have not got the drawings of those valve chambers, as to how they are designed, and

(Testimony of August Harding.)

how expensive it would be to make new patterns for that, but the work on any of those chambers would merely be \$25 apiece, outside the cap.

Q. I want an outside estimate.

A. That would be an outside estimate. I will take the job for that myself, \$25 apiece to make the valve chambers.

Q. Now, as to the other parts?

A. Well, I don't know as there is any other parts.

Q. Total the entire amount of repairs.

A. That would be about— [211]

Q. Assuming that each one of those parts would have to be replaced.

A. Yes. That would be about \$80 a cylinder.

Q. And for both engines, all of the different parts would total how much?

A. I will say about \$80 a cylinder for the reboring, putting in new pistons and putting new chambers on, new valves; using whatever parts there are that can be used.

Q. And as to the other parts that you have mentioned that you could not see that might need replacing.

A. Well, the borings and brasses,—it is very hard, without seeing, just what time it would take. I think that a man should do one of those in two days, that is, if they are not too bad; that is as bad as they are usually allowed to get in the course of work; of course it depends a good deal upon the skill of the man.

Q. I am asking you, Mr. Harding, for an outside

(Testimony of August Harding.)

estimate, assuming that they were in the worst possible condition, even requiring replacing.

A. Well, of course, there is usually a limit, when a thing gets to be so bad they have got to stop and fix it; that is not usually very bad; because when the bearing surface gets rough and refuses to take oil, it becomes so hot that the oil will burn, and the burning of the oil creates a smell that people will ordinarily detect, and then they have to make repairs.

Q. Now, assuming that all of those conditions were true of these engines, what would the total cost of replacing all of those different parts, which you could not see, amount to,—the total figure.

A. Well, I don't know—of course, I would have to figure on it; a man can't do it without figuring. In a general way, if I should take \$80 apiece for the cylinders—well, I should judge that the machinery work would run somewhere about \$450; that is the mechanical work, the machinist work. Of course there would be then the [212] taking out and putting together again.

Q. What would that taking down and assembling cost?

A. Well, taking them down, I think, under normal conditions, if you met no abnormal conditions in possibly getting the keys out of the fly-wheel, three men ought to take one of those engines down in one day; but if I were to take the contract I would want to allow two days for each engine; a machinist and two helpers, four days for the two engines.

Q. What would the total amount, including the

(Testimony of August Harding.)

machinist's work and machinery, and taking down and assembling in your opinion amount to, an outside estimate?

A. Well, let me see; allowing \$16 a day for a machinist and two helpers, for four days would be \$64; that is for taking the engine down. And it would take them at an extreme six days at \$16 a day to assemble them; that would be approximately \$96; that would be about \$160, to take the engines apart and put them together again. Of course there would be some freight on that. Of course this is figuring in a rough way the cost of the work, but it would not be far off. It is guesswork, as it were, but it would not be far off.

Q. Would it be as far as \$250 off.

A. I would say it would cost \$180.

Q. By saying it is guesswork, what would you have us understand?

A. Well, that is to say, it might vary a little one way or the other, but it won't be far off. I have allowed twice as much time to take the engines down, four days, where it would really take two; and I have allowed six days to put them together again, where it ought only to take four.

Q. And that really would be an outside estimate?

A. An outside estimate, so far as my judgment goes. [213]

Q. Did you examine the hubs of the fly-wheels yesterday?

A. Yes. There was something said about bands on them, and we looked for the cracks and we could

(Testimony of August Harding.)

not see any, could not find any.

Q. Was there anything that would prevent finding the cracks, if there were any?

A. Of course, when bands are shrunk on like that there might be cracks without their being visible. Those cracks would not be at all an injury to the casting because we often have to make fly-wheels, where they are made in two parts, and bands are shrunk on; it is no damage to shrink a ring on a hub; it is really better sometimes than to depend on the cast iron itself. I have split hubs that would not fit on to the shaft and put wrought iron clamps on them to hold it, and they hold it all right; and again you make them hold with a band.

Q. You frequently had occasion to figure upon repairing engines, had you, Mr. Harding?

A. Well, in a measure. My repair work has not been very extensive, but I have built anew work which is more costly than repair work.

Q. Would you state that in your opinion a band upon the hub would make it stronger than it had been before if a crack was in it?

A. Yes. It would depend upon what the steel or wrought iron band was to hold. The hub is frequently cast iron, and cast iron is quicker to break than steel bands.

Q. Did you look at those hubs from the end while you were there?

A. We looked at the one that had a light band on the hub, but as I said before, we could not get our heads close enough in to see whether there was any

(Testimony of August Harding.)

cracks in it, and nobody else could see.

Q. Do you know the price of Samson gas engines of that type when they are new?

A. No, I do not. I met a man who had just bought a 75 horse-power engine to take the place of a Samson engine [214] and he paid, I think, \$1750 for it.

Q. Mr. Harding, assuming that those gas engines had been in actual use for 18 months at 24 hours a day, would you or would you not say that they were in good condition?

A. 18 months at 24 hours, that would be about three years, in daily use. Yes, they should be in fair condition.

Q. Speaking now of your knowledge of the engines from the examination you made yesterday, were they in such condition?

A. So far as I could judge, yes.

Q. Could you see the cylinder head castings yesterday? A. Yes.

Q. What was their condition?

A. They were bolted in place and nothing wrong about them.

Q. Mr. HARDING.—I am referring, Mr. Taugher, to the testimony of Mr. Musladin on page 24—assuming that these statements are true, "Crank shafts are badly cut on journals and at least one engine needs rebabbing," and an estimate made of "5 days taking old crank shafts, 8 days babbetting, boring and scraping, material babbitt \$50, 4 days turning shafts."

(Testimony of August Harding.)

A. "5 days taking old crank shafts," what does he mean by that? I suppose, taking it out of the engine. "Babbitting, boring and scoping, 17 days."

Q. Material babbit \$50; 4 days turning shafts, making a total of \$254, assuming that that had to be done, what would you say as to the reasonableness of doing it?

A. The babbitting, of course, I do not know whether that babbit is correct or not. But in the first place you would have to knock down the engines; you have got to estimate on the conditions; in the first place, we have got to take down the entire engine, which would be a separate proposition; that is, clearing the crank shaft, detaching it, which I estimate [215] to be four days. Aside from that, when that was done, the fly-wheels was off and the shaft is free, it would take a man and a helper about a day to put on the babbit; if it was in the shop and put in the boring machine, it could be bored out in about six hours, which would cost \$1 an hour; that would be the expense for each individual one.

Q. How many were there?

A. Well, I will say two days, because they would have to chip out the old babbit, which is quite an effort—cutting out the old babbit and putting new in is worth about \$32 for each one; that would be \$64. Reboring is about—I have had these bored out; it would take a man about two hours on each; that is about eight hours for each one; that would be 16 for the whole lot. Then of course I would

(Testimony of August Harding.)

have to figure in the setting of it which would take more time than that; take it all in all it will take three days at eight hours, about \$24, to bore them out.

Q. Now, as to the turning of the shafts. ;

A. Of course, as it is it is usually not customary to turn the shaft; the ordinary way of doing it is to take a file and true it up right in place. Of course, if the base has to go to the shop to be babbitted and bored it would be cheaper to do it there; and it will depend altogether what kind of trouble they have upon it; if it is done in the shop where the machine was originally built, and they have the appliances to put it in the lathe, it would take a man about six hours after he has put it in the lathe, say about a day apiece for each shaft, which would be about \$8 apiece.

Q. Assuming that all of that work had to be done, including the taking down and assembling of the whole engine, what do you think the reasonable value of it would be?

A. Do you mean to do repair work? [216]

Q. Yes.

A. Well, I think it is worth about between \$600 and \$700, that is a reasonable estimate.

Q. You are assuming that the whole of the parts you could not see would have to be repaired.

A. Reborning the cylinders and putting in new pistons, and fitting the brasses and doing whatever necessary work is to be done to put that engine in condition, that is regular work that comes along in

(Testimony of August Harding.)

the course of repairing her right, it would be between \$600 and \$700.

Q. For both engines? A. Yes, for both.

Q. That would include all of the work that you think would be necessary?

A. That is all the work that I think would be necessary; if it is necessary, of course I do not know whether it is or not.

Q. Referring to the item on page 25 of Mr. Musladin's testimony, you will note an item that appears "cams, etc, \$100." From your examination of these engines would that be necessary?

A. Those cams appear to be just as good as the day they were put in there.

Q. As to the rocker-arms? A. There were none.

Q. I call your attention, Mr. Harding, to the fact that in Mr. Musladin's testimony there are several items of labor apparently specifying the parts separately. I will ask you whether or not if those engines were taken down and the work done as one job, it is not a fact that those various items of labor are duplicates by reason of their having been specified for each part? And again on page 26. Knocking down and assembling \$600; again on page 26, labor 15 days \$180.

A. Well, those items of knocking down and assembling, \$600, is more than the whole work is worth.

Q. Referring, Mr. Harding, to the labor items under the first few [217] lines on page 25, the labor item on page 25 about five lines from the bottom, the other item of labor noted upon the second

(Testimony of August Harding.)

line from the bottom on page 25, and labor noted on page 26 upon the sixth line, I will ask you whether or not each and all of those labor items are not duplications of the item upon page 26 "knocking down and assembling \$600"?

A. Well, it looks a good deal that way, because the amount of labor, I do not know where he would put it if he tried to. It seems to me to have no particular reference to where the labor is expended here. He says, "Valve chamber castings are eaten away around water passages, and exhaust valves are worn out." "Parts \$30.00." That is a reduplication of the other.

Q. Read the question.

(The last question repeated by the Reporter.)

Mr. TAUGHER.—Q. Now, talk loud enough so that we can all hear you.

A. When I get ready to talk, and until that time I won't talk.

Q. When you are talking I want to hear you, too.

A. I can talk to myself if I want to.

Q. You can't talk in this examination without my hearing it?

A. I am not under any examination now.

Q. Yes, you are under examination now.

A. I want to know the condition of this thing.

Mr. TAUGHER.—I insist the witness talk up so that he can be understood and not to whisper to his counsel or talk in an undertone so that it cannot be heard by myself.

Mr. LILLICK.—Q. Take your time, Mr. Harding,

(Testimony of August Harding.)

and when you are ready to answer the question answer it. [218]

Mr. TAUGHER.—You can do that. The only thing I want to know is when he is talking to you or to the Reporter, I want to hear it too and not to whisper it.

The WITNESS.—It is a very hot day and I am not in particularly good condition and you will have to have a little patience with me until I get it straightened out.

In answer to your question, I cannot exactly say that they are duplicates. He has itemized what each part was to cost, apparently assuming that they were knocked down, and then he puts in a big sum for knocking down and setting up.

Mr. LILLICK.—Q. Do I understand that each of those items for repair included knocking down the engines for that work?

A. Well, I will correct that in saying that this one item here "taking old crank shafts" which I suppose means taking it out, 17 days at \$12.00 a day, it should be included in that \$600. He has put down knocking and assembling. I suppose "5 days taking old crank shafts" means that he is taking them out of the engine; that is what he means.

Q. We can only speak from what is there, Mr. Harding.

A. Of course that would be included in the \$600 he puts down for knocking down and assembling the engines.

Q. You have read over that testimony carefully

(Testimony of August Harding.)

on pages 24, 25 and 26, have you, Mr. Harding?

A. Yes, I have read it.

Q. From your examination of those engines made yesterday do you believe that any portion of that work as noted upon those pages would be necessary to put those engines in good condition?

Mr. TAUGHER.—I object to that on the ground it is leading and suggestive. [219]

A. I do not believe it is necessary to put new heads on the engine; and so far as the cams are concerned, it is unnecessary; rocker-arms were not on the engine at all. So far as rebabbitting the crank shafts in the main base, I do not think it is necessary from the appearance, because there is considerable clearing space to be taken up, to judge from the amount of liners that were under the caps at present.

Q. What would that cost to take up?

A. What do you mean?

Q. The lost motion.

A. You mean to take up the lost motion?

Q. Yes.

A. Well, that is an engineer's job. He can easily do that when running it; it is a common thing, you know, the same as you take up the strap on your suspenders occasionally.

Q. How many revolutions would engines of the type of these Samson engines have to make to develop 150 horse-power?

A. You mean the six cylinders. Why, I have not figured that out. I would have to figure it out under an assumption. Of course the power of an engine

(Testimony of August Harding.)

of a given size would depend so much upon the mechanical conditions of the packing as it were, the packing rings and pistons and the valves, size of the ports, compression, and such conditions that a man would have to absolutely know before he could judge what that engine would give in power.

Q. Assuming that the engines were in reasonably good condition.

A. They might be in the best of condition, if the designer has not designed them properly, which is very often the case with people who have never had experience, no one can tell what that engine would give in the way of power within 10 or 15 per cent. Now, assuming the very best condition, it would have to run about 240 revolutions, as near as I can make it, I should judge. [220]

Q. Would it be possible to develop 150 horse-power with those engines with a revolution of 150 a minute?

A. The bore of the cylinder is 11 inches, and I am told that they are a 12-inch stroke. Now, that I do not know, but assuming that they are a 12-inch stroke, and not any more than that—I tried to measure it on the crank-shaft, but I could not do it very well. You say 150?

Q. Yes.

A. They would develop under the most favorable conditions, which I do not think those engines were under, about 102 horse-power.

Q. Assuming that the engine is so constructed that the number of revolutions required to develop 150 horse-power is 240, how much horse-power would be

Standard American Dredging Company et al. 267
(Testimony of August Harding.)
developed by 130 revolutions?

A. You assume that they would give 150 horse-power at 240—about 81 horse-power.

Cross-examination.

Mr. TAUGHER.—Q. How old are you?

A. About 63.

Q. About 63?

A. That is I was 63 last May.

Q. More or less.

A. Last May I was 63.

Q. Last May you were 63? A. Yes, sir.

Q. Your eyesight does not seem to be very good.

A. Well, it is not as good as it might be.

Q. I notice you required two pair of glasses to do any reading.

A. Of course, I used these glasses. I could do it with one pair; these are distance glasses and these reading glasses. I could read with one pair of them.

Q. But I noticed you used two pair of glasses.

A. One is distance glasses and the other reading glasses.

Q. When you were making this examination of these engines on the [221] dredger "Richmond No. 1," did you have one pair of glasses or two pair of glasses? A. I used them as I needed them.

Q. Answer my question.

A. I used them as I needed them I say.

Q. I want you to answer my question. You are under examination by me now. A. I know I am.

Mr. LILLICK.—Q. Do not allow any forcible language upon Mr. Tougher's part to excite you, Mr.

(Testimony of August Harding.)

Harding. Take your time about answering the questions. A. I am not excited.

Mr. TAUGHER.—Q. I do not want to cause any excitement. I want you to answer my question.

A. I am going to answer that question in my own way. I say, in answer to your question, that I use them when I need them.

Q. I ask you, did you have two pairs of glasses with you? A. I had two pair of glasses with me.

Q. Did you use the two pair of glasses on this examination over there?

A. One pair at times and the other at times.

Q. On this examination of yours over there did you use two pairs of glasses?

A. I used two pair of glasses when I needed them. Now, don't try to make any such kind of work on me.

Q. On this examination I am talking about.

A. I used my glasses whenever I needed them.

Q. On this examination did you use two pairs of glasses or one?

A. I used two pair of glasses when I needed them and one pair when I needed them.

Q. On this examination of yours yesterday?

A. Yes.

Q. You used two pairs of glasses yesterday?

A. I used two pair when I wanted to use them and I just used one pair when I wanted to use them.

[222]

Q. How much of the time did you use two pair of glasses yesterday?

A. I did not keep any record of the time I used

(Testimony of August Harding.)

two pair of glasses or when I used one.

Q. You had two pair of glasses on for at least an hour, did you?

A. I do not think so. I have had them on only a short time, I think.

Q. I am talking now of when you made your examination yesterday.

A. I don't know. I did not keep any record of that.

Q. Now, without your second pair of glasses you can't see a crack in any part of this engine, could you? A. I don't know.

Q. You would not see them without the glasses?

A. It depends on the size of the crack.

Q. One big enough to put your arm into.

A. Not quite that big.

Q. Do you think the mere fact that you could not see well had anything to do with hiring you?

A. I do not understand that question.

Q. Do you think that is one of the reasons you were hired to make this examination of these engines, because you could not see well? A. No, sir.

Q. How long is it since you have been employed?

A. Employed at what?

Q. On gas engines.

A. On what gas engine?

Q. Working on or repairing gas engines?

A. I do not catch the sense of your question.

Q. Read it to him, Mr. Reporter.

(The last question repeated by the Reporter.)

A. I have never been employed on gas engines by

(Testimony of August Harding.)

anybody, if you mean by that employed. [223]

Q. Have you run a business for yourself?

A. Yes, I run a business for myself.

Q. How long since? A. Since what?

Q. How long is it since you ran a business for yourself? A. That was in 1905.

Q. Since 1905?

A. That is, I closed down my business in 1905.

Q. In 1905? A. My own shop; yes.

Q. Where was that?

A. That was on Fremont Street.

Q. How big a shop was it?

A. It was a very large one.

Q. How many men did you have employed besides yourself? A. Sometimes 3 or 4 or 5.

Q. How often did you have five men employed during the year 1905? A. I don't remember.

Q. Did you have five men employed for a month during 1905? A. Yes, more than that.

Q. More than that? A. Yes, sir.

Q. Were you doing repair work on gas engines then?

A. At that time, yes; not alone on gas engines, but on machinery, a general shop.

Q. A general shop? A. Yes.

Q. General repairing shop? A. Yes.

Q. And you had as many as five men working for you at times, did you?

A. At times, yes, and at times less.

Q. And at times less? A. Yes.

Q. Most of the time did you have more than one

(Testimony of August Harding.)

man besides yourself?

A. Yes. Towards the last I had only one man and a boy, when the business was slow.

Q. How long did you run that shop?

A. Why, that shop I run about two and a half years. [224]

Q. What were you doing prior to that time?

A. Designing gas engines in connection with the Golden State and Miners' Iron Works.

Q. In connection with whom?

A. Golden State and Miners' Iron Works.

Q. Where was that?

A. That was on First Street between Folsom and Howard.

Q. How many gas engines did you design?

A. How many?

Q. Yes.

A. I could not recall it. I supposed I designed as many as ten different styles.

Q. How many of those that you designed were built?

A. I never designed any that were not built.

Q. Who built the last engine that you designed?

A. The Golden State and Miners' Iron Works.

Q. How long ago was that?

A. About four years ago.

Q. Four years ago? A. Yes, sir.

Q. Who purchased the engine?

A. They were purchased by various parties.

Q. This last one that you designed?

A. This last one, the very last one, was purchased

(Testimony of August Harding.)

by a man by the name of Peabody.

Q. How much did that engine cost?

A. \$2,400. It was built in connection with a dredge, and how much they charged them for it I could not tell you; we estimated the engine about \$2,400 or \$2,500.

Q. What kind of a dredger was that?

A. Clam-shell dredger.

Q. And that was when?

A. Well, wait a minute; I will have to correct myself on that. It is nine months ago—this engine has been at work about, I think, nine months, this particular engine I speak of.

Q. Do you know what difference there is in the work of an engine [225] on a clam-shell dredge and a suction dredge?

A. None whatever, except the work is different; but the design of the engine would not be any different, necessarily.

Q. Did you make any improvement upon those engines that you designed?

A. I always attempt to make them whenever I do design any.

Q. Or did you do that pretty close to standard?

A. Never built anybody else's engine but those that I designed myself.

Q. Are you familiar with the Samson gas engine?

A. Not any more than the ones I saw yesterday.

Q. Those are the first Samson gas engines you ever saw?

A. No. I have seen them in their place of business

(Testimony of August Harding.)
on Market Street.

Q. In the show-rooms? A. Yes.

Q. Had you ever examined one before?

A. I don't know what you mean by "examined."

Q. Did you ever take one to pieces?

A. Never took one to pieces, I never have.

Q. Do you know what a Samson gas engine of 150 horse-power is worth? A. No.

Q. Have you any idea?

A. I should judge they would sell for about \$1,600 or \$1,700, that is what I judge.

Q. You judge that.

A. I don't know what they do sell for.

Q. Did you ever do any estimating of the cost of repairs, of extensive repairs on a gas engine for anybody other than yourself? A. No.

Q. You never did that. What is the most extensive job in repairing on a gas engine that you ever did?

A. Well, as extensive as they get to be. [226]

Q. Well, never mind. Answer my question. What is the most extensive job you ever did?

Mr. LILLICK.—Q. Complete your answer as you started to give it, Mr. Harding. (Addressing the Reporter.) Will you please read that, Mr. Reporter, as far as he went.

(The last question and answer repeated by the Reporter.)

A. That is correct; as extensive as repair jobs get to be.

Mr. TAUGHER.—Q. How much did that repair

(Testimony of August Harding.)

job amount to? A. I don't remember.

Q. Approximately?

A. I did not keep any account of it.

Q. You did not keep any account of it?

A. No, never. The list of work is usually kept in the bookkeeper's department, and I paid no attention to it.

Q. Well, did you have a bookkeeper in that shop of yours?

A. That is so long ago that I could not remember what that cost at that time. I did not do any gas engine repair work to amount to anything in that time.

Q. In what time?

A. In the time that I ran that shop you speak of.

Q. You did not do any gas engine repair work for yourself, did you?

A. I did to a certain extent, but it was not sufficient for me to recollect just what the cost was.

Q. What is the most extensive job of repairing on a gas engine that you ever did when you were running a business for yourself?

A. Well, let me see; I will have to think about it.

Q. Take all the time that you wish.

A. Well, it consisted of—

Q. I mean the cost price, the cost of the repairs?

A. About [227] \$140, as near as I can remember it.

Q. \$140.

A. I think it was \$140; that is putting on and taking off an engine—that is taking off the cylinder and

(Testimony of August Harding.)

putting in a new head, a new piston, new valves and rebuilding the entire gas engine part of it so called; new governor, valves, cylinder, piston head, igniter, cams, etc.

Q. That was \$140?

A. That was \$140, as far as I can recollect.

Q. That was the most extensive job that you ever did while doing repair work when running a shop for yourself?

A. Yes; that is not my particular line.

Q. I am talking of gas engines now.

A. That is right.

Q. In that job did you have to supply any new parts?

A. Supply the cylinders, piston rings, all the parts.

Q. You supplied the cylinder? A. Yes.

Q. The piston? A. The piston.

Q. Piston head?

A. The piston has got no head.

Q. Piston? A. Yes.

Q. What else did you supply on that job?

A. Piston; cylinder; cylinder head, valves, governor, igniter.

Q. What other parts are there to a gas engine?

A. Those are all the parts except the connecting rod, crank-shaft, fly-wheel, and base.

Q. How much would it cost to have supplied those things that you did not supply?

A. Oh, about \$250, I should judge, offhand.

Q. It would have cost \$250 to supply the other things that you did not supply? A. Yes.

(Testimony of August Harding.)

Q. And \$140 to supply what you did supply—that is, the whole thing would be worth \$390?

A. Yes. [228]

Q. Well, now, Mr. Harding, who employed you to make this examination yesterday of the Samson engines on the dredger "Richmond No. 1" at Richmond?

A. I think Mr. Lillick asked me to go over.

Q. Mr. Lillick? A. Yes.

Q. How long have you known Mr. Lillick?

A. Only about 4 or 5 days.

Q. 4 or 5 days only? A. Yes.

Q. How much were you to be paid for making that examination and testifying here to-day?

A. He did not ask me any price.

Q. Did you set any price?

A. I did not set any price.

Q. What do you consider that it is worth to make the examination such as you made and testifying here? A. I have not considered it at all.

Q. What do you consider the examination is worth that you made?

A. I have not considered it at all.

Q. Now, did you get any permission from the United States Marshal to make an examination of these engines? A. Well, Mr. Knight did.

Q. Mr. Knight? A. Yes.

Q. Was Mr. Knight with you when you went over there yesterday? A. Yes, he was.

Q. What boat did you go on?

A. I did not go on any boat. I live in Oakland.

(Testimony of August Harding.)

Q. What time did you arrive in Richmond?

A. About quarter to 12, I think it was, or so.

Q. A quarter to 12 you think? A. Yes.

Q. That is near the depot in Richmond, the Santa Fe depot?

A. It was on the street that the dredge lays on. I think they call it Third Street—I don't know.

Q. What time did you get down to the dredger?

A. I think it is about 10 minutes walk from there; I think we got down there [229] shortly before 12.

Q. When did you leave there?

A. We left there about an hour and a half later. I did not time it, may be an hour later; I do not know how long a time it was.

Q. Did Mr. Knight have permission from the United States Marshal to examine those engines?

A. I think that the permission was for all that was with us—for me and Mr. Knight.

Q. Did you not attempt to operate the engines?

A. No.

Q. You did not loosen or screw up a single nut or bolt on the engines?

A. We took the shields off in order to look at the brasses; that is all, just the little screws loosened.

Q. How many screws?

A. Just two thumb screws.

Q. Two little thumb screws? A. Yes.

Q. Did you take off any other screws? A. No.

Q. Those were the only two screws that you unscrewed on the engine? A. Yes.

(Testimony of August Harding.)

Q. Did you touch any other screws? A. No.

Q. Did you hammer any with a hammer?

A. No.

Q. Or with any other instrument? A. No.

Q. And you were there for a full hour on the dredger, you think? A. I think about an hour.

Q. Who was with you?

A. Mr. Knight and that gentleman that just went out.

Q. Did either of those men unscrew any screws or do anything more than you did? A. No.

Q. Attempt to run the engine?

A. Never attempted to run the engine, because the engine was not in condition to run.

Q. Why not? [230]

A. Because there was no gasoline connection with it; that is, we had no permission, and in fact did not make any effort to—not supposed to run it.

Q. You were not supposed to run it?

A. No. An engine that has been standing six months has got to be oiled up and put in condition; it takes considerable work before it is capable of running.

Q. Now, where did you work besides the Golden State and Miners Iron Works? That is the last place you worked, is it?

A. Well, I had connections with them. I do not know as I ever worked for them particularly; you can call it that.

Q. You did not work for them?

A. I made designs for them, but I am no further

(Testimony of August Harding.)

in their employ than that. Whenever they had work for me to do it would be in making designs and I would look after the construction and installation of the engines, and when I got through with it I would usually hand them a bill for it.

Q. Now, how long is it since you worked for the Golden State and Miners Iron Works under these conditions that you have mentioned?

A. Well, I am employed to a certain extent there now; if they happen to get any work on an engine they cannot do they have me look after it, design it and look after its construction and installation. I might any time be called in to do such work.

Q. When did you build the last there when you were employed there last?

A. The last engine was a repair job on an engine that I built about 12 years ago—

Q. Did they have you estimate the cost of repairs?

Mr. SPILMAN.—I instruct the witness that he is entitled to finish his answer. [231]

Mr. TAUGHER.—Q. Go ahead and finish your answer, if you hadn't.

A. It was for the firm itself. The owner owns a mine, and that engine was to go to that mine, and I made a few changes on the engine to modernize it so as to make it better suitable for the purpose it was used for.

Q. Who estimated the cost of those changes?

A. They were not estimated at all, as far as I know.

Q. How were they paid for?

(Testimony of August Harding.)

A. They were not paid for because the owner himself was to use it.

Q. What?

A. The owner of the works was to use the engine himself.

Q. What are you doing at present?

A. Not doing anything just at present.

Q. How long have you been doing what you are doing now?

A. Oh, two or three months, taking a vacation.

Q. Now, do you know the Doak Gas Engine Company? A. Well, I have heard of it.

Q. How long has it been in existence, do you know—how long have you known them to be in business here and Oakland.

A. Well, I knew Doak about, I think it was after the San Francisco fire when I met him first.

Q. Do you know Mr. Swall? A. I met him.

Q. The superintendent of the works?

A. I have met him, yes.

Q. Do you know Mr. Musladin, the foreman of their shop? A. Never saw the man, no.

Q. Is that a pretty good concern, that Doak Gas Engine Company?

A. I think it has the reputation of being a fair concern, so far as I know. I don't know anything about it.

Q. Do you know enough about Mr. Swall to say what kind of a man he [232] is, as to whether or not he is reputable?

A. That I could not say. If I was to judge him

(Testimony of August Harding.)

by some of these figures on that paper, I should not say that he was, if he put them down.

Q. Not the kind of figures that you would put down.

A. If Mr. Swall has put those figures down, I should not say that he was a fair business man.

Q. They are still in business over there, aren't they?

A. So far as I know. I think Mr. Swall, as far as I know him, is a very nice gentleman, as far as I have seen him; that is all.

Q. Now, you just looked at the outside of those engines, did you not?

A. That is all we were permitted to do.

Q. Just to look at the outside of them.

A. The outside.

Q. You were not permitted to in any way run them, take them apart in any way or examine them in any way except as you could look at the outside of them? A. That is right.

Q. Were those engines nicely painted?

A. Had been some time, I guess. You could see some of the paint was worn off of them.

Q. What do you mean by some? Had they been painted since last used?

A. Well, I don't know whether they were or not.

Q. You could not tell that?

A. I could not tell that, no.

Q. Was not your examination close enough to tell whether or not those engines had been painted since they were last used?

(Testimony of August Harding.)

A. In fact, I did not pay any attention to it, to tell you the honest truth, I did not observe that—

Q. You did not.

A. (Contg.) —they were painted.

Q. Mr. Harding, the only thing you could look at was the outside of those engines? A. Yes.

Q. And you can't tell now from your very close and careful examination whether or not those engines had been run since they were [233] last painted? A. No.

Q. You could not tell that?

A. I did not observe whether they were or not.

Q. Well, you only looked at the outside of those engines, didn't you?

A. You do not suppose that the running of an engine is going to destroy the paint on it; that is an hour or two's run isn't going to destroy the paint on it.

Q. An hour or two's run might perhaps not destroy so much paint that careless observation would not show it.

A. I did not consider that the paint was of sufficient importance to take any notice of it.

Q. Mr. Harding, how could you see whether or not there were any cracks in that if you did not look at it close enough to see if it was recently painted?

A. The parts we looked at, we took a knife and scraped the grease and paint off, if there was any—there was no paint on the part; if there was any paint it was on the cylinders and on the base.

Q. How much grease was there on these engines

(Testimony of August Harding.)

when you examined them?

A. On the outside, didn't appear to be much.

Q. Was there any?

A. No, I don't remember that I got greasy by handling the outside. There was some inside.

Q. Could they be run for any length of time without having grease on them?

A. The grease might be wiped off. Any kind of an engineer wipes off the grease after he shuts it down, if he is any account.

Q. Now would you say that Mr. Musladin, who took these engines apart and made a thorough examination of them, was in a better position to testify as to what repairs were needed than you are?

A. Only so far as the crank shaft is concerned. he was; he had the brasses off. [234]

Q. Could you tell from looking at the outside of those cylinders whether or not the cylinders were heavy enough to stand reboring?

A. If they have never been rebored they ought to be.

Q. Answer my question, could you tell from looking at the outside?

Mr. LILLICK.—Q. Answer the question, Mr. Harding, as you propose to answer it, and go ahead and finish your answer. A. I say yes.

Mr. TAUGHER.—Q. You could tell from looking at the outside of them?

A. No, I could not tell; nobody could tell even by looking at the inside; you might tell just as well by the outside as the inside.

(Testimony of August Harding.)

Q. They could tell as well from looking at it in the position it is there now whether they would stand reboring as they could if the engine was apart and the cylinder down? A. Yes.

Q. Tell just as well?

A. Just as well inside as outside as far as that is concerned.

Q. You could tell from looking at the outside painted surface, you could tell from looking at the painted outside surface, without even tapping it with a hammer, as well as you could if the engine was apart and the cylinder down. Is that what you want us to understand?

A. You will have to talk a little more slowly and quietly, if you want me to understand you.

Q. I am not very much excited.

A. It appears so.

Q. Just answer the question.

A. I do not know any more about your question than when you asked it.

Q. Let the reporter read it?

(The question repeated by the Reporter.)

A. I am slow to comprehend.

Q. Do you understand it?

A. I am not a young man. [235]

Mr. LILLICK.—Mr. Harding, whenever you do not understand a question ask the reporter to read it to you.

The WITNESS.—Yes.

Mr. TAUGHER.—Read the question again, Mr. Reporter.

(The last question repeated by the Reporter.)

(Testimony of August Harding.)

A. Tapping it from the outside with a hammer—what do you mean by that?

Q. Read the question again, if you want it read again.

(The last question again repeated by the Reporter.)

A. You certainly could not tell anything by tapping it on the outside, because you are not in contact with the part that is rebored. The cylinder consists of two parts and one cylinder—

Q. Answer the question; never mind that. Answer the question I am asking you and make your explanation in connection with the make of a gas engine afterwards.

Mr. LILLICK.—Q. Go ahead and answer the question, Mr. Harding.

A. Yes, you could, just as well as if it was down.

Mr. TAUGHER.—Q. Then how could you tell whether or not a cylinder needed reboring?

A. You cannot tell by looking at it, whether it needs reboring. An engine might be just as—

Q. (Intg.) Answer the question.

Mr. LILLICK.—Q. Go ahead, Mr. Harding.

Mr. TAUGHER.—Q. Read the last question.

(The last question repeated by the Reporter.)

A. You can tell by subjecting the engine to a revolution and finding out how much the cylinder leaks; as the piston or cylinder wears, it continues to wear until it gets to a point where it becomes so leaky that the engine loses in power, and the only real and legitimate way of telling when that point

(Testimony of August Harding.)

has arrived is by finding out how [236] much leakage there is by compressing the air of the cylinder.

Q. Now, Mr. Harding, if you were told that a cylinder needed reboring how could you tell, or is there any way of telling whether or not it would stand reboring?

A. Yes. You would have to very likely drill holes in the jacket and measure its thickness. You can do that from the outside.

Q. Could you tell that without drilling holes?

A. No.

Q. Then could you say whether these cylinders would or would not stand reboring?

A. The presumption is that they will; if they have never been rebored, and would not stand reboring, the designer is certainly very much at fault. Yes, I can say it.

Q. Read the question again.

(The question repeated by the Reporter.)

A. I cannot get that question through my head.

Q. Well, you say you could not tell whether or not they would stand reboring without boring holes in them to discover—if that is the answer? A. Yes.

Q. Is it always necessary to tell whether or not they would stand reboring?

A. I do not believe that anybody ever questions that a cylinder will stand reboring. I have never heard that questioned in my life, would a cylinder stand reboring, because reboring consists only of taking about a thirty-second of this journal, a

(Testimony of August Harding.)

thirty-second of the diameter, simply rounding it up, and no more possibly than the thickness of two pieces of paper to be taken out. I do not believe that any man ever questions the fact or ever in any way takes into account whether it will stand it or not.

Q. If the Doak Gas Engine people, if the superintendent of the Doak Gas Engine Company, and the foreman in charge of the Doak [237] Gas Engine Company have said that it would not stand reboring, you would say they would not know what they were talking about?—that they know nothing about it.

A. I would take chances of reboring it now.

Q. I suppose that is the reason why you are not in business.

A. No, that is not the reason I am not in business.

Q. You would proceed to take things in that way.

A. No, not at all. I am in business all right.

Q. Did you examine the crank shafts on those Samson gas engines at that time aboard the "Richmond No. 1"?

A. We raised and lowered the connecting rods to see how much lost motion there was on the brasses on the rist pins.

Q. What do you mean by the connecting rods?

A. The connecting rods are the rods that connect the piston to the crank-shaft.

Q. Well, could you see the crank-shaft at all?

A. Yes, we could see the crank-shaft; only we could not see the parts that were covered by the brasses and by the caps.

(Testimony of August Harding.)

Q. Did you take those parts off? A. No.

Q. Did you raise these connecting rods with your hands? A. No, with a pry.

Q. With a pry? A. Yes.

Q. Well, when you did, didn't you push the piston up into the cylinder?

A. Only to the extent of the lost motion, yes.

Q. To the extent of the lost motion? A. Yes.

Q. How much was the lost motion?

A. Oh, anywhere from zero to a thirty-second of an inch.

Q. Anywhere from zero to a thirty second of an inch? A. Yes.

Q. How do you know that it was nothing then?

A. Because it would not move. [238]

Q. It would or would not move?

A. It would not move when it is nothing, and only moved about a thirty-second of an inch, may be, or a little bit less.

Q. Couldn't rust in there stop it from moving?

A. It could, but it did not.

Q. How do you know it did not?

A. You mean the pistons? We turned the crank-shaft over and moved the pistons.

Q. Then you found the pistons free of rust?

A. So far as we could see them, yes.

Q. How much of them did you see?

A. Just the part sticking through, the part sticking through the packing and sticking out from the cylinder a couple of inches.

Q. Did you move the pistons up or down in the

(Testimony of August Harding.)

cylinders? A. Yes.

Q. How often? A. Just one turn.

Q. One turn? A. Yes.

Q. Then is the engine in condition to run?

A. It is in condition to run providing it is oiled up properly. Of course it is very stiff now, after standing six months without oiling—too stiff to run unless you oil it up.

Q. Now, could you say whether or not the crank-shafts were cut on the journals?

A. I could not say.

Q. Why couldn't you tell?

A. Because they were covered by the brasses.

You mean in the journals of the crank-shaft?

Q. Yes. A. No; they were covered by caps.

Q. You did not see those? A. No, sir.

Q. Could you tell from looking at the outside whether or not those engines needed rebabbing?

A. It is generally assumed, as long as— [239]

Q. (Intg.) I am asking you this question.

Mr. LILLICK.—Q. Just continue with the answer as you propose to make it, Mr. Harding. Take your time about answering.

Mr. TAUGHER.—It will come back to the same thing; he has got to answer that question; that is all.

Mr. LILLICK.—Mr. Reporter, repeat the question and the answer as far as the witness had got.

(The last question and answer repeated by the Reporter.)

A. (Contg.) It is generally assumed, as long as there are liners under the caps that they are not worn

(Testimony of August Harding.)

down to that extent.

Mr. TAUGHER.—Q. How many liners were there under the caps?

A. About one sixteenth of an inch, as near as I could judge.

Q. How many?

A. I did not count them; I just simply took about the thickness of them; I could not tell how many.

Q. Did you look at those particularly?

A. Yes, we looked them all over.

Q. Looked them all over? A. Yes.

Q. How much of them could you see?

A. Just the distance between the cap and the socket on which the cap is.

Q. Can you say whether or not those engines needed rebabbitting? A. I cannot, positively, no.

Q. You cannot. Well, then, if Mr. Musladin after a close examination said that they did you would not be in a position to contradict him, would you?

A. Well, he did not state whether he had the shafts out or not, did he?

Q. He had them all apart.

A. I question that very much, that he could see very much more than I did.

Mr. LILLICK.—Allow me to state, Mr. Harding,—and I want to do this so that it may be correctly in the record,—that the examination [240] that Mr. Musladin made was before the engines had been repaired, and after Mr. Musladin's examination repairs were made on the engines, so that you will

(Testimony of August Harding.)

understand. You need not put that into the record, Mr. Reporter.

Mr. TAUGHER.—I want everything to get into the record; anything that is said on this examination I want to be taken down by the reporter and put into the record.

Q. Now, Mr. Musladin said it would take five days to take off the old crank-shafts. Could you say it would be done in less time than that?

A. To take off the old crank-shafts, yes. A man ought to take them down in about, so far as the crank-shafts themselves are concerned, if everything else was removed,—he ought to take them down in five hours.

Q. Did you ever take out one?

A. Lots of them.

Q. From engines such as these are?

A. Not engines such as these are, but engines of a similar type. You have nothing to do except to take the caps off and lift the shaft out of place. Of course the fly-wheels are off and the connecting rods are taken off.

Q. Sure, if everything is all off you could lift them off. A. Yes.

Q. How long would it take to take them off?

A. It would take on each of those engines, taking a machinist and two helpers, about two days to take that whole engine to pieces, as I said before; that would be four days, assuming, of course, that the fly-wheels would come off reasonably easy. There are conditions sometimes when a key is driven in so

(Testimony of August Harding.)

hard that it can't be driven out again, and you have to drill it out, and that causes a delay. But to knock that engine down, those two engines, a machinist and two helpers can do it easy in two days say for each engine; that is [241] four days for the job.

Q. How much would the material for rebabbitting cost?

A. Well, that would depend altogether on the depth of the journals, which I have not got. That is the space filled by babbitt.

Q. How long is it since you purchased any material for rebabbitting?

A. Oh, personally, it is some time. The babbittting is all bought through the office at the Golden State and Miners Iron Works in the last year.

Q. Now, how long would it take for babbittting, boring and scraping those engines?

A. As a general thing, they are not bored till they are babbitted and scraped. But it would take about a day to cut off, one man alone to cut out the old babbitt and take a man a day and a helper to pour in the new babbitt on each one of those—two days for the three. And it ought not to take a man more than a day to rebore each one of them, that is 8 hours, allowing about two hours for each journal.

Q. Now, Mr. Musladin and Mr. Swall say it will take at least 8 days to do this.

A. They can say anything they like.

Q. Are you in a better position to say what time it would take than they were?

A. I am in a position to know pretty near what

(Testimony of August Harding.)

time it would take, with such men as I would employ. They might employ men that would take such time, but such men I would not employ at all.

Q. You are a large employer of labor and you know how long it would take?

A. Well, that depends a good deal on the men.

Q. You have employed one man at a time, sometimes even up to three, haven't you?

A. I have employed and managed a good many men and a good many kinds of men.

Q. How long would it take to remove those fly-wheels? [242]

A. That might take anywhere from two hours to two days. You can't tell anything about it. If the keys will yield to the drift as they will in normal conditions, it will take two hours apiece to take them off.

Q. If the fly-wheels were in such condition that they could not be put on after being taken off, how much would new fly-wheels cost on those engines. Mr. Musladin and Mr. Swall say it would cost at least \$160. How much do you say?

A. How many do they want to put on?

Q. Two.

A. They are hardly big enough to cost that much.

Q. Did you ever buy any fly-wheels that would suit those engines?

A. I think those fly-wheels are about five feet in diameter. I do not know whether those fly-wheels weigh over 1200—yes, they weigh 1500 pounds. Yes, they would be worth about \$150.

(Testimony of August Harding.)

Q. You understand, Mr. Harding that salt water has a tendency to corrode the metal and that the studs rapidly become loose, do they not? A. Yes.

Q. Particularly when you are working in and around salt water? A. Yes.

Q. Have you any idea as to the number of studs that were loosened in those engines?

A. Not at all.

Q. Well, now, are the castings thick enough to stand retapping and the putting in of new studs?

A. Sometimes they are and sometimes they are not.

Q. I understand that, but are they on these engines?

A. I could not say. That is a point that I did not look into, because I did not think it came under the head of this dispute. I understood that the engines, the cause of the dispute was that the engines were overworked and damaged, and any corrosion caused by salt water [243] is altogether outside of the damage that could be done by overworking the engine, so I did not make any examination of that feature; I did not think it was necessary.

Q. Now do you know anything as to the valve gear on those engines?

A. The valve gear was in perfectly good condition, as far as the shaft and cams are concerned, and what I could see of the gears and the crank-shaft.

Q. Now, the Doak gas engine people say that the valve gear is so worn and rusty as to necessitate its entire replacement, and requiring 12 valves and

(Testimony of August Harding.)

parts which are worth \$120. What have you to say to that?

A. I can't say anything because I have not had them out; I did not examine them, did not consider it was a part of the dispute.

Q. Well, they say the cams that are necessary to be replaced would cost \$100; what have you to say to that?

A. I say the cams do not have to be replaced because they are not worn.

Q. They do not need to be replaced, in your judgment? A. No. The rocker-arms are not there.

Q. The rocker-arms are not there? A. No.

Q. No rocker-arms on the engine?

A. No rocker-arms on the engine.

Q. You are quite positive of that?

A. Quite positive of that.

Q. You could not see any rocker-arms from the outside any way?

A. If there were any rocker-arms connected with those valves I would have seen the rocker-arms; there were no rocker-arms connected with the valve, none outside and none inside.

Q. Now, they say that the cylinder head castings are thin and rusted away around water outlet, making it impossible to maintain a water tight joint, and the various parts needed would cost about \$20, the material \$20, and the labor of fixing \$100, making about [244] \$140. What have you to say about that? A. I say it is not necessary work.

Q. It is not?

(Testimony of August Harding.)

A. It is not necessary to do it; I do not believe it is in that condition.

Q. How do you know how thin or how thick the cylinder head castings are?

A. They don't need to be very thick, because there is no material pressure on it, and if they have held they will hold now.

Q. Don't they start to leak salt water at times?

A. Not necessarily. I do not think the gentleman who made that statement ever tried whether they would leak or would not leak. They do not know any more about it than I do; he could not tell any more than I could tell whether those joints leak.

Q. The man who ran the engines for years says that it does leak. A. Not on the heads.

Q. On the heads and into the firing chamber.

A. You mean in the valve chamber.

Q. Into the firing chamber.

A. What do you mean by the firing chamber?

Q. In the cylinder, that the water leaks into that?

A. Leaks into the cylinder?

Q. Yes.

A. That does not follow; that might even be if it is in perfect condition; if the main engine is not properly designed; those ports should not exist there, if there are ports in the head of the cylinder—that is, if there are ports which pass from the cylinder jacket to the head, that it is the worst kind of a design a man can make, and I do not think any man that is responsible for that design, if they do leak,

(Testimony of August Harding.)

can make anything of that kind tight, under those conditions. [245]

Q. Were those engines made that way, in the way you have described?

A. I don't know. I infer from what you say, if the water gets into the firing chambers, the valve chambers are bolted on the side of the cylinder.

Q. Well, do you say that it would be impossible for water to get into the firing chamber there on those engines?

A. It would be if the engine was properly designed.

Q. Those engines as they are.

A. That I could not say, because I have not examined that part of it.

Q. You have not examined that part of it?

A. No.

Q. Well, you are a designer. aren't you?

A. Yes, but I could not say from the outside how the man has designed his model on the inside, unless I took it apart and saw it.

Q. Well, now, suppose water does actually get into the firing chamber, how could it be cured in those engines?

A. Well, if they have been corroded, then simply turn the metal down to smooth it up again, as we often do, and put the thing back where it was.

Q. If the studs won't hold it, what then?

A. In that case we could not hold it then.

Q. What would you do then?

A. Of course you have to rebuild the thing some

(Testimony of August Harding.)

other way. If the design is so made so that the studs will rust out, it is a hopeless proposition.

Q. Now, Mr. Musladin in his report says that the crank brasses will need refitting; also piston brasses. Did you see those?

A. No, the piston brasses I did not see.

Q. Did you see the crank brasses? A. Yes.

Q. He says the labor on that is worth \$50, on those two jobs, on the crank brasses and the piston brasses.

A. It depends on how [246] much work there is to be done; it might be right.

Q. Well, from your examination could you say that was too much or too little, or could you say that was too much or too little, or could you say anything about it at all?

A. I could not say anything about it at all.

Q. Now, he says here, that the valve chamber castings are eaten away around water passages and exhaust valves are worn out; that the parts will cost \$30 and the labor necessary to replacing and repairing those is 15 days—the material is 250 pounds at 6 cents, that is \$15; the labor is 15 days at \$12 a day; that is for a machinist and helper—what does a first-class machinist get?

A. Well, they get about 50 cents an hour.

Q. What do the shops charge when making repairs?

A. Well, anywhere from 80 cents to \$1.00.

Q. They charge \$1 an hour.

A. In some shops they charge more than others.

(Testimony of August Harding.)

Q. Now, Mr. Harding, in estimating the prices, are you estimating the prices that a man would have to pay when he comes to the shop or estimating prices that you on the inside would pay to one of your men? A. No; shop rates.

Q. You are giving outside rates, are you?

A. Yes.

Q. They say that work would cost, material, parts and labor would cost \$220. What do you say as to that charge? Of course those charges are all testified to.

A. I calculate that labor \$20, and material, on each one.

Q. What is that, each cylinder or all of them?

A. That is reboring the cylinder and putting in new pistons and putting on new chambers and valves.

Q. They say \$220; what do you say about that?

A. About \$120.

Q. About \$120? A. Yes. [247]

Q. Now, they say 30 piston rings would cost \$60. Do you know anything about that? That is \$2 a ring.

A. I would put that in, the general estimate of \$60, for reboring, packing piston rings, etc. Of course it don't cost that much. A man don't pay \$2 for each of those rings.

Q. They say that cartage and freight from the Point Richmond Land and Canal Company's place to the shop would cost \$100; have you figured out what it would cost to cart those engines from the

(Testimony of August Harding.)

position where they are now to any machine-shop in Oakland where it could be done?

A. I did not get any figures on it, no.

Q. Would you say \$100 was a reasonable charge?

A. Let me see; they are supposed to weigh about four and a half tons. I should judge it ought to be gotten out of there for about \$5 a ton; I would estimate those engines at 8,700 pounds, each of them.

Q. Well, their charge for cartage and freight would be \$100; is that a reasonable or unreasonable charge?

A. I do not know what the railroad charges for carrying freight from there are; it might cost that and it might not, I could not say.

Q. Now, they say to machinist's time at Richmond about \$100. I suppose that is for disconnecting the pipe and various things? A. Yes.

Q. Then they say knocking down and assembling—knocking down the engines and then afterwards assembling the parts at Richmond, \$600.

A. Yes. That makes \$700; he estimates first the machinist as \$100 and then adds \$600.

Q. For knocking down and assembling it.

A. What is the machinist's time? I don't understand what that \$100 was for.

Q. What do you say about that charge of \$700?

A. Well, I say it is about six times too much—I won't say that; I will have to figure that; yes, I think all that work can be done for \$150 or \$160.

Q. Now, the testing, they put down that at \$100; is that a reasonable charge?

A. No; I think very unreasonable.

Q. Too much. A. Yes.

Q. What would be a reasonable charge in your estimation? A. About \$20.

Q. Incidentals they put down for \$200.

A. I don't know whether there are any.

Q. You don't know whether or not there are any?

A. No.

Q. Six igniters at \$12 each, \$72.

A. Well, they are worth that, I guess, if they are good.

Q. Now, how much would those engines be worth after they are repaired, in your estimation?

A. They should be as good as the day they were made, after all the repairs have been made.

Q. After having been used for several years they are as good as the day they were made?

A. After the repairs were made.

Q. Was your examination sufficient for you to say they would be as good as the day they were made?

A. Yes.

Q. Your examination was thorough enough?

A. Yes, so far as it went; not taking into account any corrosion that might have occurred through salt water.

Q. What color were the engines painted?

A. My recollection is they were painted green.

Q. All green? A. I think so, yes.

Q. The cylinders, you say, were in place?

(Testimony of August Harding.)

A. Yes.

Q. And looked normal? A. Yes.

Q. Did you expect to find the various parts scattered around the shop over there of the Richmond Canal and Land Company.

A. Yes, I expected they were all full of holes and falling to pieces, after reading the testimony of the witness there; I [249] thought they were eaten up and gone to pieces.

Q. Did you read Mr. Musladin's testimony before going over there?

A. No, I did not, unfortunately.

Q. Where did you get this description regarding those engines?

A. Oh, I heard them speaking. I heard Mr. Knight speak about it.

Q. Did Mr. Knight say they were full of holes and about to fall to pieces?

A. He did not say that. He said they were considered worthless.

Q. He said they were considered worthless?

A. That is, they had been so represented.

Q. That was not Mr. Knight's opinion, was it?

A. No.

Q. Where did this opinion come from, that they were worthless?

A. I heard him speaking about this testimony, and he said that the engines had cost \$2,500 to repair, and they were worth only \$2,000 after that was done, and I supposed from that fact they were beyond repairing, and all that sort of talk.

(Testimony of August Harding.)

Q. But you know they are not beyond repair?

A. So far as I am able to judge, they are not, no. I have no reason to assume that they are beyond repair.

Q. You have no reason to assume they are beyond repair? A. No.

Q. Mr. Harding, could you tell from looking at the outside of a house how much it would cost to complete the decorations and make the necessary repairs to put it in the condition that the owner desired it to be?

Mr. LILLICK.—I object to the question as irrelevant and absurd.

A. I could not.

Mr. TAUGHER.—Q. You could not tell from looking at the outside of the house how much repairing it might need on the inside? [250]

A. No. But I can judge pretty near on an engine, so far as the appearance goes.

Q. That is, you could tell from a look at the outside of a gas engine what repairs it needs?

A. Pretty near, with the exception of the valves.

Q. Has the newness or the oldness of the paint on the engine anything to do with your estimate as to the condition of the engines? A. No.

Q. Wouldn't you think if an engine was newly painted it would be in better repair than if not painted? A. Not at all, not to my eye.

Q. Not to your eye.

A. I would rather think to the contrary.

Q. I am surprised to know you think that way

(Testimony of August Harding.)

about it. You just looked at the outside of those engines and you can tell from the outside look that they are in good repair.

A. So far as they can be judged from the outside, yes.

Q. But you can't tell whether they were recently painted or not?

A. I did not pay any attention to that part, the painting part.

Q. Did Mr. Knight intimate how much you were to get for testifying?

A. I have not heard a word of it. I don't know anything about it.

Q. How much do you expect to charge for testifying?

A. That is my own business, I do not care to tell you.

Q. How much do you expect to charge for the examination that you made and the testimony that you give her?

A. I do not propose to tell you anything about it. I have not made up my mind about that at all. I am not doing things for money; if I did I probably would have more.

Q. You have not much money. Well, I want to know how much you [251] charge for this examination you made and the testimony you have given, and I think I have a right to know?

A. I could not tell you, I have not thought about it; I don't know anything about it.

(Testimony of August Harding.)

Mr. LILLICK.—Q. Do you expect to charge us anything more than a reasonable amount for your time, Mr. Harding? A. That is all.

Mr. TAUGHER.—Q. Now, you say the fly-wheels seemed normal, but they had bands on—one had a band shrunk on it; is that a normal condition for a fly-wheel?

A. Sometimes it is; it depends on the fly-wheel.

Q. Were those fly-wheels made that way?

A. I could not tell. One was without a band, and the other one had a small band, but that small band was covered with a lot of other material; a pulley was built up by wrapping some belting around, some such thing; there is no way of telling what the purpose was why the ring had been put on after for. I could not imagine it was put on to strengthen the hub because it was too light.

Q. Well, you judged from looking at that fly-wheel that it had been injured and a band shrunk on to keep it working?

A. Not at all. I could not tell that; sometimes people take that precaution, but if they did it is not strong enough. After it is once cracked it makes it more expensive to repair.

Q. Could you tell whether or not there was a crack in the wheel?

A. No. I looked but could not find any.

Q. You did not find the crack on there? A. No.

Q. Then have you any idea why that band was put on? A. Why it was put on?

(Testimony of August Harding.)

Q. Yes.

A. I think Mr. Knight said that it was claimed that—

Q. Never mind what Mr. Knight said; I am asking you.

Mr. LILLICK.—Q. Go on and answer the question the way you were proceeding to answer it.
[252]

A. I got my idea from what Mr. Knight said, that they claimed that it was cracked.

Mr. TAUGHER.—Q. But you did not see any crack in it.

A. I could not see any crack in it. I looked for it. There was some smooth surface near the key, where the crack was likely to be, right over the key—you could not see the crack.

Q. Was the key in that fly-wheel overdriven?

A. I could not tell.

Q. Did the fly-wheel look as though it had been battered somewhat?

A. I could not see anything of the kind on it.

Q. The key looked as though it had been driven home pretty hard?

A. The one that did not have the paint on appeared to be; the other one I can't recall as having been particularly examined.

Q. Now, do you know the prices of material necessary to make the repairs on those engines, or would you have to get that from shop lists?

A. You pay about—

(Testimony of August Harding.)

Q. (Intg.) All the various parts in those engines?

A. The material that I could see that would be necessary to make those repairs that you speak of is cast iron.

Q. Nothing but cast iron?

A. Essentially nothing but cast iron, and so far as the valves are concerned, of course there is some steel in the valves, usually the stem; of course, the babbitt, I don't know how much they use and the quality.

Q. Well, now, they mention a lot of parts here, parts and material, brasses and piping, valve chamber castings, parts for the valve chambers and valves, piston rings, igniters and various other parts and materials that would be required. Now, do you know the prices of those various things? You carry that in your head, don't you?

A. You don't have to carry very much in your head [253] because you can buy cast iron anywhere from 4 to 5 cents a pound, depending on what kind of castings they are; you pay for steel anywhere from $3\frac{1}{2}$ to 6 cents a pound, and babbitt you buy anywhere from 25 to 35 and 40 cents a pound.

Q. What does cast iron cost?

A. From $3\frac{1}{2}$ cents a pound up.

Q. It is put down here at 6 cents; would that be exorbitant? A. It would be for some castings; yes.

Q. For small castings?

A. Well, it might not be for some castings.

Q. Now, Mr. Musladin said that he would not be

(Testimony of August Harding.)

able to tell what the cost of these various things would be without having his cost list at his elbow, that is, without being able to consult his cost list.

A. He would not be?

Q. Yes. You could do that without consulting any cost list, could you?

A. So far as cast iron and steel and babbitt is concerned, yes, there is nothing much about that.

Q. Still, the various parts that would be needed to repair these engines—

A. That would constitute all the various parts.

Q. That is all the repairs needed?

A. You can make all the repairs out of those three things, as a rule.

Q. Now, did you take a hammer and tap those cylinders? A. No object in doing that.

Q. Could you tell from the look of them whether they were iron cylinders or wooden cylinders?

A. I know that nothing else is used but cast iron, and I never question it.

Q. Could you tell by looking at them whether they were iron or wood? A. Yes, I could.

Q. How?

A. By simply taking a knife and scraping them.

Q. Did you do that in this case?

A. I did not think it necessary. [254]

Q. Could you tell from anything you did in your examination of those engines whether those cylinders were wood or iron?

A. Well, I think the question is too silly to ask.

Q. I want an answer to it? A. Yes.

(Testimony of August Harding.)

Q. How could you tell?

A. Tell it by putting my hand on it, whether it is wood or iron.

Q. Did you do that?

A. I did. I came in contact with it and if it had been wood I would have known it.

Q. You could tell by looking at it, could you?

A. I could tell by looking at it, yes, because you can always tell a piece of wood from a piece of iron by looking at it.

Q. You say the tubes were in place?

A. No tubes there. The piping was all in place, yes.

Q. Did you look at the boiler tubes? A. What?

Q. That was on the other engine. How much work would it take to oil those engines up so that they would run?

A. Oh, it would take a couple of men a couple of hours, likely.

Q. How long is it since you bought any parts for a gas engine?

A. Never buy any parts for gas engines.

Q. Did you ever buy any parts for a gas engine?

A. Never buy any parts for a gas engine, no. I buy castings and do that all in the works there, and whatever purchasing is done is done through the office.

Q. And you would say that you can tell practically all the repairs that would be needed on a gas engine from a look at the outside of the engine?

A. No. I say we have assumed that certain repair

(Testimony of August Harding.)

work is necessary, which is caused by the natural wear of the engine. [255]

Q. That assumption does not take into consideration the fact that the engine might not have been properly taken care of or properly operated. Are you proceeding upon the theory that the engines had been properly operated and cared for?

A. I have been proceeding upon the theory that these repairs were necessary. I do not say that they have been; I have not assumed at all that they are; but we have assumed that if they were necessary that the cost would be about \$600 to put that engine in shape.

Q. You don't know whether they are necessary or not?

A. I don't know whether they are or not; I doubt very much if they are.

Q. You can tell pretty well from a look at the outside that they are or are not necessary?

A. We did not try to tell that they were necessary; we assume that they are, we do not know that they are. I question it, that they are necessary, because the man that attended to them, that originally put them in or overhauled them when they went in there, said they are in better condition than when they came into the possession of the present defendants.

Q. But you do not mean to tell us that you can tell anything of the repair of a gas engine by looking at the outside, do you?

A. Yes, I can tell by looking at the outside how

(Testimony of August Harding.)

far the inside is all right—

Q. You mean to say from looking at the outside of a gas engine you can tell how much it would cost to repair it?

A. Yes. That is, assuming I do all the work that is necessary to do on the inside.

Q. You would not make a bid on it?

A. I would make a bid on it to replace those pistons, cylinders, [256] and put on new chambers simply by looking at the outside, if that was all that was necessary.

Q. You would not put in a bid to repair all the necessary parts of those engines just from looking at the outside, would you?

A. Yes. I do not think that the owner would take my bid for it, though.

Redirect Examination.

Mr. LILLICK.—Q. Have you any occasion, Mr. Harding, to change the testimony you have given with reference to your opinion as to the condition of those engines at the present time? A. No, sir.

(An adjournment was here taken until Thursday, October 19th, 1911, at 10 A. M.) [257]

Thursday, October 19th, 1911,

[Testimony of Rupert Hannah, for Claimant.]

RUPERT HANNAH, called for the claimant, sworn.

Mr. LILLICK.—Q. What is your age? A. 33.

Q. What is your occupation?

A. Practical mechanic.

(Testimony of Rupert Hannah.)

Q. Have you ever been employed by the Samson Iron Works? A. Yes, sir.

Q. How long? A. About six years off and on.

Q. What position do you occupy with them?

A. On the outside work.

Q. What do you mean by "outside work"?

A. Doing repairing and installing.

Q. During the six years that you have been working for the Samson Iron Works, when an order comes in to the Iron Works for a man to be sent to one of the Samson engines about the State, who is sent out to do the repairing?

Mr. TAUGHER.—I object to the form of the question as suggestive and leading.

A. One of the outside men.

Mr. LILLICK.—Q. How many outside men have they?

A. Sometimes three and sometimes four or five.

Q. During the last six years have you been an outside man during the entire time? A. Yes, sir.

Q. How many times have you been sent out from the shop at Stockton during those six years for the purpose of repairing engines?

A. That is a hard question to answer.

Q. About how many times?

A. A couple of hundred, anyway.

Q. How far have you gone from Stockton?

A. As far as Coalinga, and as far north as Marysville City.

Q. Do you know all of the working parts of the Samson gas engine? A. I do. [258]

(Testimony of Rupert Hannah.)

Q. Are you thoroughly acquainted with the construction of the engines? A. Yes, sir.

Q. Have you seen the Samson gas engines that are at present on the dredger at Richmond?

A. Yes, sir, I went over there day before yesterday.

Q. Did you make an examination of them?

A. As far as we could by looking at them.

Q. What do you mean by as far as you could?

A. As far as we could see.

Q. Mr. Hannah, were you the man who was sent down from the Samson Gas Engine Works at Stockton to Oakland, during the time that the dredger "Richmond No. 1" was being moved from the estuary to Lake Merritt? A. Yes, sir.

Q. Who did the repair work on the engines at that time? A. I did myself, and a helper.

Q. What was the condition of the cylinders on the two engines at that time, if you know, with reference to their condition before you repaired them, and with reference to their condition after you repaired them? A. Fairly good.

Q. Are you speaking of the cylinders both before and after the repair work was done on her then. Do you mean by that that no repairing was done on the cylinders at that time? A. None except to put rings on.

Q. In going over the engines, did you have occasion to examine them with particular care with reference to the pistons and cylinders at that time?

A. I do not understand your question. Repeat

(Testimony of Rupert Hannah.)

the question. (The Reporter reads the question.)
No.

Q. Did you look at the cylinders to see their condition and to see whether or not they needed reborning? A. I did not.

Q. You understand that I am speaking of the time when the [259] engines were repaired at Oakland while the dredger was being moved from the estuary to Lake Merritt? A. Yes, sir.

Q. Can you state what the thickness of the cylinder wall was at that time, approximately?

A. No, sir. They are supposed to be $\frac{3}{4}$ of an inch thick.

Q. In what condition were the cylinders?

A. Very good.

Q. Do you know whether or not the pistons in the cylinder were in good working order at that time?

A. Yes, sir.

Q. You overhauled the engines then generally, did you not? A. Yes, sir.

Q. Did you stay there until the machines commenced working after the repairing was done?

A. No, sir, I finished and went back, and came back when they started work.

Q. What was the condition of the engines at that time? A. Good.

Q. Had you occasion at that time to see the crank-shaft? A. I did.

Q. Do you know whether or not there were any cuts or scorings in the crank-shaft about where the bearings were?

(Testimony of Rupert Hannah.)

A. No cuts or scorings only a little flat; the pins were flat.

Q. Did you have any instructions when you did the repair work at that time, to be as economical as you could with the job? A. I did.

Q. Was not the job to be done so that the engines should be put in perfect condition?

A. In fairly good condition.

Q. By fairly good condition, do you mean in condition to do the work that was required by the engines to make the dredge operate?

Mr. TAUGHER.—I object to the question upon the ground that it is leading and suggestive.

A. Yes, sir. [260]

Mr. LILLICK.—Q. In stating that you were instructed to do the job as economically as you could, were you instructed to spare any expense with reference to putting the engines in working order?

Mr. TAUGHER.—I object to the question upon the ground that it is leading and suggestive.

A. No, sir.

Mr. LILLICK.—Q. Do you desire to make any explanation of the answer that you made a little while ago, that you were to do the work economically. Did that have any reference to your sparing any expense in putting them in good working order?

Mr. TAUGHER.—I object to the question upon the ground that it is leading and suggestive.

Mr. LILLICK.—I will reframe the question.

Q. Mr. Hannah, in stating that you were to do the job as economically as possible, did you under-

(Testimony of Rupert Hannah.)

stand that you were to do anything other than to overhaul the engines generally and put them in good working order?

Mr. TAUGHER.—I object to the question upon the ground that it is leading and suggestive, and on the ground that the witness has stated what his instructions were.

A. To fix everything that needed fixing; in other words, what absolutely had to be fixed.

Mr. LILLICK.—Q. When you came back from Stockton when the machine was running, was it running in proper condition? A. It was.

Q. From your examination of the engines made day before yesterday, and your knowledge of the condition of those engines after the repairing was done before it commenced to work at Lake Merritt, was there any difference in their condition? [261]

Mr. TAUGHER.—I object to the question upon the ground that it is leading and suggestive?

A. As far as I could see there was none.

Mr. LILLICK.—Q. Were there ever any rocker-arms on those engines, Mr. Hannah?

A. There were not when I repaired them.

Q. You mean when you repaired them where?

A. Lake Merritt.

Q. The work was being done while it was moving through Oakland? A. Yes, sir.

Q. Did you look at the cams on the engines the day before yesterday? A. I did.

Q. In what condition were they?

A. In the same condition as they were when I repaired them.

Q. And what condition was that?

A. Fairly good.

Q. How many fly-wheels are there on the two engines? A. One on each engine.

Q. What was the condition of those fly-wheels when you looked at them the day before yesterday?

A. Good.

Q. Did you look at the hubs to see if the hubs were cracked? A. I did.

Q. Were there any cracks in the hubs?

A. None that I could see.

Q. What was the condition of the keys which were driven into the fly-wheels to keep them on the shaft?

A. They were apparently tight.

Q. Were the fly-wheels themselves tight on the shaft?

A. As far as we could see they were tight.

Mr. TAUGHER.—Q. Driven tight or rusted tight? A. They were tight. [262]

Mr. LILLICK.—Q. You have had sufficient experience with engines to know whether those fly-wheels were rusted on tight or whether they were kept tight by the keys that are in them, haven't you?

A. Well, from looking at them they were tight. That is all I could say.

Q. Without reference to the rust?

A. If the engine was running you could tell.

Q. Mr. Hannah, in the repair work that you do

(Testimony of Rupert Hannah.)

have you had occasion to observe how long it will take to knock down engines of the type of the engines over on the dredger? A. I have.

Q. In your opinion how long will it take to knock down the two engines that are over there in the condition they are in now?

A. I would estimate about four days, with two helpers and myself.

Q. Is that for knocking down alone?

A. Yes, sir.

Q. How long will it take to reassemble them?

A. If the machine work is all done, and just reassembled alone it will take about a week.

Q. Are you speaking of both knocking down and reassembling will take a week?

A. The knocking down I figure will take four days.

Mr. TAUGHER.—Q. With three men?

A. Myself and two helpers.

Mr. LILLICK.—Q. Without reassembling how long will it take you? A. About a week.

Q. In addition to the four days?

A. Yes, sir.

Q. I hand you the testimony of Mr. Musladin, and ask you to read over the bottom of pages 24, 25 and 26, and ask you whether or not in your opinion there are any duplicate statements of labor (handing). Have you gone over that? [263]

A. There are five days here for taking out old crank-shafts. That comes under the head of knocking down.

(Testimony of Rupert Hannah.)

Q. Are there any other items there that come under the head of knocking down?

A. The rocker-arms, they do not belong there at all. They are not on the engine. He has in here an item of "knocking down and assembling, \$600." It seems as though that had not ought to come on twice. That is all I can see.

Q. From your experience as an outside repairman of the Samson Iron Works, and the examination you made of the engines from an external view the day before yesterday, what in your opinion is the condition of those two Samson engines at the present time? A. They are in fairly good shape.

Mr. LILLICK.—That is all.

Cross-examination.

Mr. TAUGHER.—Q. Are you still employed by the Samson Iron Works? A. Not at present.

Q. When did you leave their employ?

A. A year ago last fall.

Q. Were you discharged?

A. No, sir, I was not.

Q. How did you come to leave them?

A. I went into my own business.

Q. What was that business?

A. The threshing business.

Q. What business are you engaged in now?

A. I have just got through; just came in off the run.

Q. What kind of a run?

A. The season's run.

(Testimony of Rupert Hannah.)

Q. How long is it since you have been working for the Gas Engine Company?

A. Off and on for about seven years.

Q. How long since you have quit working for them? A. Last March. [264]

Q. Who did you work for then?

A. Zellerback & Middlecroft.

Q. Where are they? A. Stockton.

Q. How long did you work for them?

A. About four months I think.

Q. In what position? A. As repair-man.

Q. Were you ever advanced in any gas engine work as far as Foreman? A. I was not.

Q. How long would a pair of Samson gas engines ordinarily work effectively with good handling; in other words, what is the life of a Samson gas engine of say 75 horse-power? A. On a steady run?

Q. Yes, well handled.

A. Oh, about four years.

Q. Four years? A. Yes, sir.

Q. They would not last beyond four years?

A. Well, they would be repaired in that time.

Q. I mean with proper repairs constantly made as they were required?

A. I do not know. They will last a long time if they are repaired up occasionally. I cannot tell.

Q. What would you say would be the life of a gas engine that was properly handled and properly repaired as needed?

A. I do not know of any that is worn out yet.